

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**CR. REV. APPLICATION NO.213/2018**

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Date	Order with signature of Judge
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1. For hearing of MA No.297/19
2. For hearing of MA No.298/19
3. For hearing of case.
4. For hearing of MA No.10680/19

**16.01.2019**

M/s. Khawaja Muhammad Azeem & Ms. Sadia Khatoon advocate for applicant.

Mr. Waseem Akhtar, Assistant Attorney General.

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**Salahuddin Panhwar-J** At the outset learned counsel for applicant contends that complainant and accused have entered into a compromise whereby grievance of complainant is redressed hence they have filed compromise application; complainant, who is present in Court, has no objection if same is accepted and the accused is acquitted from the charge. It is further contended that applicant is nephew of present applicant who is in custody; admittedly ingredients of section 406 PPC are not attracted and section 420 PPC is compoundable hence instant compromise application. It is pleaded by the DAG that application for compromise may be directed to be decided by trial Court.

2. The applicant / accused has challenged legality of convictions, so awarded to him for offence punishable under section 420 and 406 PPC. *Legally*, the compromise could be allowed only for those offences which, per Schedule-II of the Code, have been allowed to be compounded. The offence under section 420 PPC is compoundable while section 406 is not, therefore, permission for compounding the offences, *normally*, could not proceed further till the sought compounding is not shown for those offences which are permissible to be compounded.

3. Since, an act of *forgiveness* is always worth appreciating as the same, if is voluntary, always reflects stepping towards good relations by parties over all the *itches* between them, therefore, it would be in all fairness to attend the root contention of applicant to the effect that offence under section 406 PPC was never made hence conviction to such extent is, *prima facie*, illegal. To attend this properly, at this juncture it would be conducive to refer definition of Breach of Trust provided under section 405 PPC.

**“Criminal breach of trust:** Whoever, being in any manner entrusted with property, or with any dominion over property dishonestly misappropriates or converts to his own use that property, or dishonestly use or dispose of that property in violation of any direction of law prescribing the mode in which touching the discharge of such trust, or willfully suffers any other person so to do, commits breach of trust”

*Legally*, an offence of **criminal breach of trust** would not stand constituted unless ingredients thereof, including voluntary entrustment of property and its subsequent misappropriation, are not co-existing. Being conscious of such legal position, when went through the record, I found that in this case allegation is that present applicant and other co-accused cheated the complainant on the assurance of arranging visa for *Umrah*, which allegation, *prima facie*, would fall within meaning of **‘cheating’**, punishable under section 420 PPC. Accordingly, I am of the clear view that punishment for offence under section 406 PPC is not tenable and same is hereby set-aside.

4. Now there remains offence under section 420 PPC for which the parties have filed the compromise applications with request to remit the case back to trial court for accepting

compromise. Before entertaining such request, I would add here that the provision of Section 439 of the Code does confer powers of appellate Court hence it would always be safe in saying that even while exercising Revisional Jurisdiction this Court can competently entertain application for compounding the offences. Such legal position *even* stood affirmed by induction of subsection 5A of Section 345 of Code which reads as:-

“(5A) A High Court acting in the exercise of its powers of revision under section 439 (and a Court of Sessions so acting under section 439-A), may allow any person to compound any offence which he is competent to compound under this section)

However, the question of genuineness or *voluntary* nature of compromise is always necessary hence before allowing permission to compound the offence the Court (s) shall always be required to satisfy itself before granting permission that such move is genuine.

5. Reverting to request of parties for remitting the case for accepting compromise applications, I would say that such request *legally* cannot be entertained because for entertaining compromise applications, the Court must possess jurisdiction in any of three defined classes i.e **‘trial Court’; ‘appellate court’; or revisional court.** Since, an order for remand in an appeal could not be recorded unless the conviction, so awarded for offence is set-aside with a view to have requirement of any *law* to be fulfilled. *Prima facie*, the fate of legality of conviction for offence under section 420 PPC is not being pressed. In short, the request appears to be that of remanding the case without determination of legality thereof, which, legally cannot be accepted.

However, since legally applications for compromise could well be decided by Revisional Court, therefore, I find it in all fairness to proceed further.

6. The parties, present, have reaffirmed the contents of compromise applications and have further affirmed that same is voluntary one. Keeping in view of purpose and objective of *forgiveness* the permission to compound the offence granted. In consequence thereto, the application for acceptance of compromise and acquittal of the applicant/ accused from the offence, already affirmed to be genuine and voluntary, is also allowed, impugned judgments are set aside. As a result of applicant/accused is acquitted. Applicant/accused shall be released, *forthwith*, if not required in any other case crime.

The instant Criminal Revision Application stands disposed of accordingly.

**J U D G E**

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