

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.862 of 2023

Date	Order with signature of Judge
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For hearing of main case

10.11.2023

Pir Irfan Ahmed advocate for the applicant alongwith applicant/
Complainant Pervez Alam.

Mr. Abrar Ali Khichi, Additional PG

Through this Criminal Miscellaneous Application, applicant/complainant Pervaiz Alam has called in question the order dated 24.7.2023 passed by learned VIIth Additional Sessions Judge Central Karachi, whereby Revision Application filed by the applicant against the order dated 28.4.2023 passed by the learned VIth Judicial Magistrate Central Karachi on application under Sections 345(2) and 345(6) Cr. P.C has been dismissed on the ground that the accused was/is an absconder in F.I.R No. 308 of 2020, registered for the offense under section 489-F PPC at P.S Sir Syed Karachi, as such compromise could not be effected in his absence, an excerpt whereof is reproduced as under:-

“By this order, I would like to dispose of above criminal revision application filed on behalf of complainant above named, being aggrieved and dissatisfied with the order dated 28.04.2023 passed by learned Civil Judge & Judicial Magistrate-VI, Karachi Central, on the application under Section 345(2) & 345(6) Cr.P.C, hence, this revision with the prayer to set aside the impugned order, on considering the facts and grounds mentioned therein. Notice of above revision application was given to DDPP/ADPP for the state, who received copy of the revision application.

I have heard learned advocate for Complainant and APG for the State. Learned advocate for Complainant argued that they have settled their dispute outside the court amicably; That trial court dismissed the aforesaid application even complainant filed a compromise application. Advocate for the complainant also filed a statement along with case law reported in PLD-2012-Sindh-35 in support of his arguments and prayed to set aside the order dated 28.04.2023. On the other side, learned APG for the State contended that there is no value of compromise filed by learned advocate for the complainant in the eyes of law; That applicant accused of this case is absconder since long; That no cognizance has been taken yet. In the end, APG for the State prayed to dismiss the instant application.

After hearing and considering the above submissions advanced by learned advocate for the Complainant and APG for the state as well as perusal of the relevant record including order dated 28.04.2023 passed by Civil Judge & Judicial Magistrate-VI, Karachi Central, dismissing said application as well as contents of FIR, it is my humble opinion applicant accused is nominated in the FIR and remained absconder since institution of FIR and deliberately avoiding to appear before court.

In above circumstances, I am of the considered view that instant revision application has no merits for consideration which is liable to be dismissed. The learned trial court rightly passed the impugned order dated 28.04.2023 dismissing the above application of the complainant giving proper and cogent reasons therein, because, learned advocate for the Complainant failed to point out any illegality and material irregularity committed by learned trial court while passing the impugned order, on the basis of which, the impugned order could be interfered and set aside. The above-mentioned case law relied upon by learned advocate for the Complainant in support of his above arguments is distinguishable from the facts of this revision, and hence, not applicable in the circumstances of present revision. For what has been discussed above, the impugned order did not call for any interference by this court in exercise of its revisional jurisdiction. Resultantly, this revision application stands dismissed in the above circumstances accordingly.”

2. Learned counsel for the applicant/complainant submits that the complainant has settled his dispute and does not wish to prosecute the accused Muhammad Waseem Khan anymore the criminal Case pending before the learned VIth Judicial Magistrate Central Karachi, therefore, has no objection if this Court by granting the instant Criminal Miscellaneous application, and acquit the accused of the charges.

3. Mr. Abrar Ali Kitchi, learned Addl. P.G submitted that since respondent No.4/accused has not been summoned /arrested in the aforesaid case as the cognizance has been postponed by the learned Magistrate vide order dated 18.08.2023, as the prosecution/complainant may be allowed to withdraw from the subject FIR as he seems to be no more interested to prosecute the accused.

4. Admittedly, the offense has been made compoundable under the law. For ready reference, the provision of section 345 Cr. P.C is reproduced as under:-

“345. Compounding offences. (1) The offences punishable under the sections of the Pakistan Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table.”

5. The offense under Section 489-F PPC is compoundable and cognizable by the police, therefore, the person accused of committing such an offense, is either arrested by police or apprehending his arrest, and he seeks pre-arrest bail. The parties, after registration of a criminal case can enter into a compromise. The provision of Section 345 Cr. P.C. bifurcates viz-a-viz the compounding of offenses, with or without the permission of the court, into two categories. The Supreme Court of Pakistan had expounded this legal proposition in the case titled *Tariq Mehmood Vs. Naseer Ahmed* (PLD 2016 SC 347) as under:-

6. The offence under Section 489-F PPC, is compoundable between the parties, without intervention of the Court. The role of the Court thus

remains to finally give effect to such compromise in pending proceedings against the accused by way of its termination. It has been observed that while entering into a compromise, generally the accused gives an undertaking, which is normally in writing, and the same is tendered in the court in any of the forms i.e. affidavit, compromise deed, or any other form that in case, he is granted bail, he shall make the payment of the amount, either mentioned in the cheque or agreed upon inter-se the parties, at the time of compromise. The accused, in this way, earns his liberty and saves himself from facing the rigors of jail. This liberty is the outcome of a bargain with the complainant in lieu of his commitment to making payment. The compromise, after registration of the case against the accused; and, in case of trial, it may terminate, either in acquittal or conviction of the person accused of commission of the offense, by a Court having jurisdiction. The offense under Section 489-F PPC as per Schedule-II of the Code of Criminal Procedure Code, 1898, is triable by the Magistrate of the first class.

7. The question involved in the present proceedings is whether the prosecution has sufficient material/evidence to warrant the prosecution of the accused or whether the complainant being the victim is competent not to prosecute the accused.

8. The complainant being the victim is competent not to prosecute the accused, and the Public Prosecutor with the consent of the complainant has the power to withdraw prosecution if reasonable ground exists under section 494 of the Cr. P.C; and even under sections 63, 249, and/ or under section 249-A, Cr. P.C. the Magistrate is empowered to stop the proceedings/ discharge and /or acquit any accused on grounds that charge is groundless and there is no probability of conviction; and, no incriminating material available against the accused.

9. From the above section, it is also clear that an application for compromise can be filed or taken up for adjudication at any stage of the proceeding of trial if the complainant does not want to prosecute the accused i.e. even before the recording of prosecution evidence. Although there is no bar for the prosecution to withdraw from the prosecution and or for the accused to apply to the said section at any stage of the proceeding of the trial, therefore, no impediment may hinder or restrain to granting of application under Section 345 Cr. P.C.

10. Accordingly and because of the above, the application under Section 345 Cr. P.C. filed by the applicant/complainant is hereby converted to the application for withdrawal of the prosecution from the case arising out of FIR No. 308 of 2020, for offenses under Section 489-F

PPC of PS Sir Syed District Central as provided under Section 494 Cr.P.C. Consequently, instant Criminal Miscellaneous Application is hereby allowed. Resultantly, the impugned orders dated 28.04.2023 handed down by VIth Judicial Magistrate Central Karachi and VIIth Additional Sessions Judge Central Karachi, 24.7.2023 are hereby set aside, for the reason that cognizance of the offense was postponed by the learned Magistrate vide order 18.08.2023.

11. Before parting with this order it is observed that since the cognizance of the offense under Section 489-F PPC has not yet been taken, by the Judicial Magistrate and it is the mandate of the Court to grant permission to the prosecution/complainant to withdraw from the prosecution of the accused as the complainant is of the same view therefore as judicial propriety demands to adhere to the request of the prosecution /complainant to withdraw from the prosecution of the accused and no further action is required to be taken in the aforesaid FIR.

JUDGE