

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

CrI Acquittal Appeal No.S-77 of 2023.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For orders on M.A.No.4892/2023.
3. For hearing of main case.

06.03.2024

Mr. Javed Ahmed Soomro, advocate for the appellant.

After hearing learned counsel for the appellant at some length and from perusal of impugned order passed by Vth CJ & Judicial Magistrate, Larkana, vide order dated 06.10.2023 in Cr. Case No.21 of 2022, it appears that the allegation as contained in the FIR No.21 of 2022 registered under section 494, 506(ii), 114, 148, 149, PPC at Police Station Allah Abad, by the complainant Muhammad Paryal Chohan, who is real father of accused has got registered the case.

The allegation contained in the FIR were either false or material has been brought was not sufficient to substantiate such allegation, therefore, the learned trial Court proceeded to decide an application filed under section 249-A, Cr.P.C for the acquittal of the accused persons, whereas, three accused have been shown absconders. It will be advantageous to reproduce paras-6 & 7 of the impugned order, which reads as under :

"6. Heard learned for the accused and learned ADPP on behalf of the State and have perused the record with utmost care with their valuable assistance. It is matter of fact that the present accused are only facing the charges under section 506(ii), 109, PPC Read with Section 114, PPC as such charge was amended in the light of order dated 04.7.2023, passed by Honourable 5th Additional Sessions Judge, Larkana. From the perusal of the record nothing is present which suggests that the alleged involvement of the



Agd

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present accused is confined to the extent of aid or abetment to the absconding accused in solemnization of the marriage which is Nikah over Nikah which attract to the section 109, PPC. The abetment or aid has to be shown from the face of the FIR or along with strong and material proofs but in instant case no any specific role attributed to accused in commission of crime which attract to section 109 Read with Section 114 PPC. As far as section 506(ii), PPC is concerned no any recovery of the alleged weapon or any other evidence available on record which may go against the accused if the proper evidence will be recorded and it would be only wastage of time and nothing else.

7. Keeping in view of submission of learned ADFPP that prosecution may be provided with the opportunity to bring further evidence on record so that matter could be decided on merits. I found it appropriate to analyze his submissions in light of the provision of Section 249-A Cr.P.C and items No.10 (E) of Part 3(D) the National Judicial Policy, 2009, which read respectively as under :

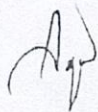
{249-A Power of Magistrate to acquit accused at any stage.- Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence.}

National Judicial Policy 2009.

D. EXPEDITIOUS DISPOSAL OF CASES

SHORT TERM MEASURES.”

From the perusal of above, prima facie, there is no factual error or legal infirmity in the impugned order, whereas, learned counsel for the appellant while confronted to assist as to whether he can point out any material or evidence which may prima facie connect the accused persons with the alleged crime or could point out any error in the appraisal of the material available on record, which prima facie contains mere allegation, however, does not make out a case of abduction or marriage over marriage by lady nominated, hence, does not attract the provisions of Section 494, PPC. However, he could not submit any reasonable explanation to this effect. The complainant who



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is real father of the accused Mst. Roazina has since expired, therefore, there is hardly any possibility of connecting the accused persons, particularly his own daughter on the allegation leveled in the FIR, which appears to be result of some personal animosity. I am also conscious of the fact that allegation of such serious nature affecting the chastity of a woman, without any material or substance need to be examined with extra care and caution, and on the basis of mere allegations, a woman should not be prosecuted and left at the mercy of some unscrupulous elements and to face the agony of prolonged trial. It is further observed that neither her previous husband or any material witness has come forward with such allegations constituting an offence under section 494, PPC, therefore, there is hardly any possibility of conviction of accused in the instant case otherwise. Accordingly, I do not find any merit in the instant criminal acquittal appeal which is dismissed in limine along with listed application. —



(Ageel Ahmed Abbasi)
Chief Justice