

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS

Crl. Revision App. No.S-12 of 2024

(Sultan Vs. The State)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing & Order 08.08.2024

Mr. Samiullah Rindh, Advocate for the applicant along with applicant
Complainant Muhammad Yousif is present in person.

Mr. Shehzado Saleem, Additional P.G Sindh

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ORDER

Adnan-ul-Karim Memon, J. Through instant Criminal Revision Application under section 435 & 439 Cr. P.C, applicant Sultan has sought reversal of the sentence awarded to him by the trial Court i.e. Judicial Magistrate/Judge Consumer Protection Court, Mirpurkhas in Criminal Case No.12 of 2019 vide Judgment dated 26-10-2019, whereby he was convicted and sentenced for the offense under section 420 PPC and sentenced to suffer Imprisonment for 03 years with a fine of Rs.45,000/- (Forty-Five Thousand only) and in case of default, to suffer six months more simple imprisonment with the benefit of section 382-B Cr.P.C. Subsequently, he assailed his conviction before the learned Additional Sessions Judge, Khipro vide Criminal Appeal No.14/2019, who vide impugned Judgment dated 02-12-2019 maintained his conviction awarded by learned trial Court.

2. Brief facts of the prosecution case as per FIR lodged by complainant Mohammad Yousuf at P.S Town Mirpurkhas on 27.02.2019 at 1730 hours are that he is electrician; he had purchased a plot bearing No.102, admeasuring 1000 sq. ft situated in *Khayaban-e-Mustafa* Housing Scheme, Mirpurkhas from accused Sultan son of Shahabuddin Qureshi, resident of House No.209, Hirabad, Mirpurkhas in the sum of Rs.500,000/-. On 09-01-2017 at about 1100 hours, the complainant along with his uncle Mohammad Rafique and brother Mohammad Younus went to the house of Sultan Qureshi and sat in the drawing room, where before the witnesses executed the sale agreement on stamp paper No.12285 and the complainant paid entire sale consideration of Rs.500,000/- to Sultan Qureshi before the witnesses and Sultan Qureshi stated that after one month he will get registered sale deed. After one month accused Sultan neither executed a registered sale deed nor returned the amount. Thereafter, the complainant came to know that the plot under sale was registered in the name of another person; hence complainant demanded the amount from the accused Sultan Qureshi but he kept him on false hopes. On 03-06-2018 at about 0100 hours complainant went to the house of the accused Sultan Qureshi to collect the amount where accused Sultan Qureshi asked the complainant to sit in the drawing room; in the meanwhile Abdul Mannan and Muhammad Yameen Qureshi also came there; they all beaten him and confined him in the drawing room for about one hour. Thereafter, all three accused persons issued threats by stating that if the

complainant again came and demanded the amount they would kill him. Thereafter, the complainant made the complaint to his uncle Rafique and brother Mohammad Younus and filed such an application before the Court of Sessions Judge Mirpurkhas then on the order of the Court complainant came to P.S and lodged the FIR. After completing the investigation police submitted challan of the case before the Court of Learned Civil Judge and J.M-1 Mirpurkhas. Thereafter charge was framed against the accused persons at Ex. 02 to which they pleaded not guilty vide their pleas at Ex. 02/A to Ex.2/C. To prove the charge, the prosecution has examined (PW-1) I.O SIP Dansingh at Ex.6, he produced a certified true copy of the order dated 23-02-2019 passed in CrI. M.A.No.180 of 2019, FIR, roznamcha entries, memo of the place of incident, and letter for grant of bail at Ex.6-A to Ex.6-F. (PW-2) Complainant Muhammad Yousuf at Ex.7, produced a sale agreement of a plot situated in *Khayaban-e-Mustafa* Scheme at Ex.7/A. (PW-3) Muhammad Younus at Ex.8, produced a certified true copy of the bail order at Ex.8/A. hereafter, statements of accused persons u/s 342 Cr. P.C. were recorded at Ex.10 to Ex.12, in which they stated that they were innocent and falsely implicated in this case for blackmail purposes. However, the accused neither examined themselves on oath u/s 340(2) Cr. P.C. nor led any defense evidence. The trial court after evaluating the evidence and hearing arguments, as advanced by the defense and prosecution, recorded the judgment dated 26.10.2019, convicting the appellant/accused under section 420 PPC as stated above while acquitting the co-accused persons. The appellant being aggrieved by and dissatisfied with the above judgment preferred appeal before the learned Sessions Judge Mirpurkhas which was dismissed by maintaining the conviction awarded by the trial court.

3. At the outset learned counsel for the applicant contends that the complainant and accused have entered into a compromise whereby the grievance of the complainant is redressed hence he has filed a compromise application; The complainant, who is present in Court, has no objection if same is accepted and the accused is acquitted from the charge. Section 420 PPC is compoundable. It is pleaded by the learned Additional PG that the compromise application may be directed to be decided by the trial Court. Legally, the compromise could be allowed only for those offenses that, per Schedule II of the Code, have been allowed to be compounded. The offense under section 420 PPC is compoundable, therefore, permission for compounding the offenses, can be allowed. 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 allow the parties to live peacefully. An excerpt of the paragraph No.02 to 04 of the application under section 345(6) Cr.P.C is reproduced as under;

“2. The parties have patched up out of the Court due to the intervention of the Nek-Mards of the locality.

3. That the complainant has forgiven the accused person, in the name of Almighty Allah without any pressure, threats and/or influence.

4. That compromise will promote cordial relations between the parties, as the parties are residing in the same vicinity and are relatives inter-se.”

4. Before entertaining such a request, I would add here that the provision of Section 439 of the Code does confer powers of the appellate Court hence it would always be safe to say 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 the 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)”

5. 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 a move is genuine.

6. Reverting to the request of the learned Additional Prosecutor General for remitting the case for accepting compromise applications, I would say that such a 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 the offense is set aside to have the requirement of any law to be fulfilled.

7. Prima facie, the fate of the legality of conviction for an offense under section 420 PPC is not being pressed. In short, the request appears to be that of remanding the case without a determination of legality thereof, which, legally cannot be accepted. However, since legal applications for compromise could well be decided by the Revisional Court, therefore, I find it in all fairness to proceed further as the parties, present, have reaffirmed the contents of compromise applications and have further affirmed that the same is a voluntary one without duress. Keeping in view of purpose and objective of forgiveness the permission to compound the offence is granted. In consequence, thereto, the application for acceptance of compromise and acquittal of the applicant/ accused from the offense, already affirmed to be genuine and voluntary, is also allowed, and impugned judgments are set aside. As a result, the applicant is acquitted of the charge as set out in the impugned Judgments passed by the learned trial Court and Appellate Court. The applicant is on bail vide Order dated 30-12-2019, his bail bond stands discharged in terms of a compromise application filed by the parties present in the Court. The office is directed to assign M.A. Nos to the applications.

JUDGE