IN THE HIGH COURT OF SINDH KARACHI

Crl. Acquittal Appeal No.237 of 2010

Appellant	:	Syed Muhammad Abbas Through Mr. Tariq Hussain, Advocate
Respondents No.3 & 4	:	Syed Ahmed Zafar and Abdul Aleem Through Mr. Danish Raza, Advocate
Respondent No.6	:	The State Through Mr. Haider Saleem, Additional Prosecutor General a/w Ms. Saima Maqsood A.D Legal NADRA
Date of hearing	:	26.10.2026
Date of Decision	:	16.11.2026

JUDGMENT

MIRAN MUHAMMAD SHAH, J:- The captioned Criminal Acquittal Appeal impugns the order dated 06.05.2010, passed by the learned IInd Civil Judge & Judicial Magistrate, Karachi East, in Criminal Case No. 340 of 2009 [*The State v. Abdul Aleem & Others*], arising out of FIR No. 64/2003, registered at Police Station Ferozabad Karachi, for the offences punishable under Sections 147, 148, 452/34, P.P.C., whereby the application under Section 249-A, Cr.P.C., filed by the respondents/accused, was allowed and they were acquitted.

2. Briefly, the facts of the prosecution case are that on 17.02.2003, at about 1330 hours, accused Abdul Aleem, Karim Durrani, Bakhtrawa, Salik Sadiq and Syed Ahmed Zafar, duly armed with deadly weapons, committed house trespass by entering into the house of the complainant Syed Muhammad Abbas, situated at Bungalow No. 28/C, Block No. 6, P.E.C.H.S., Karachi, and started beating the complainant, issued threats to him and his family, and attempted to dispossess the complainant from his house.

3. A formal charge was framed against the accused, to which they pleaded not guilty and claimed trial.

4. The prosecution examined the complainant Syed Muhammad Abbas. Thereafter, ample opportunities were afforded to the prosecution and the complainant to produce the PWs; however, they failed to produce the witnesses. Subsequently, learned counsel for the accused persons moved an application under Section 249-A, Cr.P.C. After hearing learned counsel for the respective parties, the learned trial Court, by allowing the application under Section 249-A, Cr.P.C., acquitted the respondents/accused through the impugned order.

5. Learned counsel for the appellant contended that the learned trial Court had erred both in law and on the facts of the case. He also argued that it was the duty of the learned trial Court to record the evidence of the PWs; and that the case ought to have been decided on merits rather than being disposed of on technical grounds. He, therefore, prayed that the impugned order be set aside and the respondents/accused be convicted.

6. Learned APG, assisted by learned counsel for the respondents No.3 & 4, supported the impugned order.

7. I have heard learned counsel for the appellant as well as learned counsel for respondents No. 3 and 4, so also the learned Additional Prosecutor General.

8. This matter was reserved for judgment on 08.09.2026. However, in the meantime, report was called from NADRA regarding verification of the deaths of respondents No. 1, 2, 4 and 5. Despite several notices issued on different dates, no one appeared on behalf of NADRA. Ultimately, a notice through MIT-II was served upon counsel for NADRA, who appeared in the matter on 26.10.2026 and stated that if she is provided the CNICs of the alleged deceased persons, she would verify their deaths. However, no details were provided by either of the counsel for verification. Since the matter has remained pending for judgment, having already been reserved, no further adjudication was required for which the matter could be kept pending. It was

ultimately reserved for judgment. It is very unfortunate that this case remained pending for the last 16 years before this Court and on one pretext or another was adjourned. All the respondents, except one, are stated to have expired during the pendency of this criminal acquittal appeal. Even otherwise, the incident pertains to the year 2003, which brings the total pendency to 23 years. Such lengthy pendency, particularly in a criminal case, is futile in itself and does not provide any relief to either of the parties. It also overburdens the Courts. Such pendency must be curtailed to reduce the backlog of cases, particularly those pending at the appellate stage. A criminal acquittal appeal in any case is to be considered with special care and should be admitted for regular hearing, particularly where some material irregularity or illegality is found in the acquittal judgment/order passed by the trial Court. The superior Courts have held that special care must be observed while deciding an acquittal appeal and that such an appeal should not be decided ordinarily. However, keeping such an appeal pending on one pretext or another needs to be discouraged.

9. Coming to the facts of the case in hand and dilating upon its particular pendency, it may be observed that most of the respondents in this case have since expired during the pendency of this appeal. Although a counsel has been appearing in this matter only for the surviving respondent No. 3. He was earlier also representing respondent No. 4 and made a categorical statement that he had lost contact with respondent No. 4 and that perhaps respondent No. 4 has also since expired. During the proceedings before the trial Court, respondent No. 2 had also expired; however, his death was constantly challenged by the appellant/complainant side. Such objection is reflected even in the impugned order as well as in the subsequent course of arguments. The deaths of respondents No. 1 and 5 remained unchallenged. On the last date, an opportunity was provided to both sides to furnish details of the deceased respondents for verification of their deaths but no one from

either side was willing to do so. In such circumstances, this Court has observed that respondents No. 1, 2, 4 and 5 are no more in this world and have expired during different stages of the case. Hence, the pendency of this appeal is merely an academic exercise for the satisfaction of the appellant/complainant side, as the majority of those who were implicated in this case are no more alive, and only one respondent remains, who is duly represented by his counsel but has reached a frail age.

10. Since this case arises out of an FIR lodged in the year 2003 and all the present respondents were nominated as accused and later acquitted under Section 249-A, Cr.P.C., after recording the complainant's evidence. Their guilt or otherwise requires to be decided one way or the other by this Court. The applicability of Section 249-A, Cr.P.C., in criminal trials is generally discouraged, as it has been observed that a full-dress trial is the essence of criminal proceedings and that only thereafter should the guilt or otherwise of the accused be determined on the basis of the entire evidence. However, the provisions of Sections 249-A and 265-K, Cr.P.C., have been enacted as statutory provisions in the law book by the Legislature in its wisdom and cannot be brushed aside, as every provision of law is prescribed for a specific purpose. Such provisions may be applied based on certain grounds, if applicable to a particular case. The impugned order in this matter was passed on 06.05.2010, whereby all the respondents were acquitted under Section 249-A, Cr.P.C., on the ground that the ingredients of the main offence applied in this case were not attracted at all. For the sake of brevity, the relevant Section 452, P.P.C., is reproduced as under:-

> **452. House-trespass after preparation for hurt, assault or wrongful restraint**. Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

11. The learned trial Court, despite the above position, framed the charge against the accused/respondents and examined the complainant, who, in his deposition, admitted that the accused/respondents were partially in possession of the property and were using the front gate for entrance. Hence, the question of their being accused of committing house trespass or attempting to dispossess the complainant does not arise. This could merely be an allegation, but without any substance. Thus, at the very outset, the complainant himself tainted his own case and shattered the charge framed against the respondents/accused. From the evidence of the complainant, it is also revealed that a civil dispute exists with regard to the property, in connection of which the allegation of house trespass was made. A number of different civil proceedings have been mentioned during the adjudication of the case. Even the complainant has admitted in his deposition that Civil Suit No. 35/1997 is pending. The said suit was filed by the father of respondent No. 4 for permanent injunction. Though the pendency of civil litigation does not restrict the parties from initiating any criminal proceedings, if so required, on the basis of an incident that may occur during the pendency of a civil dispute. Such criminal proceedings are, many times, initiated merely to settle scores and unnecessarily overburden the Courts by creating flimsy incidents that have no basis or substance. The case in hand also appears to be one of such nature. Such cases must be dealt with under the provisions prescribed by law, such as Sections 249-A and 265-K, Cr.P.C. Where there is no strength in the prosecution's story and a civil dispute is already in existence, no conviction can take place, particularly when the complainant's evidence has been recorded and his deposition itself indicates that there is no substance in the allegations levelled in the FIR. When the deposition of the complainant belies the contents of the FIR, the trial must be concluded forthwith, and an application of this nature should be allowed after applying proper reasoning. It is very unfortunate that cases of this nature are kept

pending merely on technical grounds, whereas the subject matter lacks any strength, and adjudicating upon such cases is an exercise in futility and a waste of the Court's time. In this regard I place my reliance on the following case laws:-

2026 SCMR 1390

> "9. An acquittal is called a "double presumption of innocence" and it is not mandatory that there must be numerous aftermaths that give rise to doubts to justify the benefit to the accused, rather a single circumstance if creating reasonable doubt is enough to enable him a benefit. The interference in a judgment of acquittal is found to be rare unless some glaring errors of law and fact are shown by the prosecution to demonstrate that the acquittal judgment is perfunctory with shocking conclusion. In the criminal justice system, if two sensible and judicious conclusions can be drawn, then the view which espouses and provides backing towards acquittal must be subscribed to. The Court in an appeal against acquittal would not ordinarily interfere but gives due weightage to the findings of acquittal which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence. The learned High Court while reversing the acquittal did not advert to any cogent or solid ground for its reversal and remanding the matter to the Trial Court after a long period of time. No independent application of mind seems to have been applied to evaluate the Trial Court order but the acquittal order was set aside in a slipshod manner without scrutiny of record or incriminating material, which if at all or at the best, available for indictment of the petitioner who was acquitted in both the cases."

PLD 1993 Supreme Court 399

> 6. ….Perusal of section 249-A, Cr.P.C. clearly shows that trial Magistrate is given power of acquitting an accused person at any stage of the case, if after hearing the prosecutor and the accused and for reasons to be recorded, he considers that charge is groundless or that there is no probability of-the accused king convicted of any offence, Use of words "at any stage of the case" indicates intention that such order can be passed even before recording of evidence, if facts of the case are such and the Court is satisfied that no useful purpose would be served by proceedings further in the matter. There is no dispute about the fact that ingredients of criminal offences such as, under sections 420, 406, 467, 468 and other cognate offences are similar as would appear in most cases of beach of contract. No doubt in such cases both remedies on criminal as well as civil sides are available and can be pressed into service but guidelines in the case-law show that Civil Courts be given preference and allowed to decide such disputed facts….."

2014 SCMR 1741

"7. The above evidence of petitioner amply demonstrates that there was practically no material or evidence available with the petitioner to substantiate his claim of robbery and that the whole issue seems to have been created by the petitioner due to family dispute with his wife and sons on account of the flats which petitioner managed to have sold to himself on the basis of purported unregistered power of attorney given to him by his wife, in respect of which two civil suits are already pending. Where the suits are pending between the parties on the subject, criminal court will obviously stay its hands in entering upon the dispute as deciding the dispute with regard to properties squarely falls within the domain of Civil Court in respect of which parties have already initiated proceedings.

8. We have gone through the impugned order and are satisfied that it does not suffer from any perversity or illegality. We find no merit in this criminal Petition. The same is, therefore, dismissed and leave refused."

Un reported judgment dated 07.11.2026
Passed by a Divisional Bench of this Court
in Spl. Crl. Anti-Terr. Acq. Appeal No.42 of 2025

"11. In the case of The State through Assistant Advocate General v Abdul Wadood (PLD 2013 Balochistan 39), it has been held that the power conferred upon a Court under Section 265-K, CrPC is not confined to any particular stage of the proceedings rather the Court is competent to exercise such power at any stage of the trial provided that upon an objective assessment of the available record, it is satisfied that there is no probability of the accused being convicted of any offence. The exercise of this power though extraordinary in nature is intended to prevent the continuation of futile or purposeless criminal proceedings where the material on record does not disclose any reasonable likelihood of conviction……"

12. In view of the foregoing discussion, I am of the considered view that the instant Criminal Acquittal Appeal No.237/2010 is devoid of merit. No illegality or material irregularity is found in the impugned order dated 06.05.2010, passed by the learned IInd Civil Judge & Judicial Magistrate, Karachi East, which may warrant interference by this Court. Accordingly, the instant appeal is dismissed, and the impugned order is maintained.

JUDGE

Suleman Khan/PA