

IN THE FEDERAL SHARIAT COURTOF PAKISTAN

(Appellate/Revisional Jurisdiction)

PRESENT

MR. JUSTICE SYED MUHAMMAD FAROOQ SHAH

MR. JUSTICE SHAUKAT ALI RAKHSHANI

Crl. Appeal No.10/P of 2014

The State through Advocate-General, Khyber Pakhtunkhwa,

Peshawar.

.....Appellant

Versus

1. Meharban S/o Muhammad Siddique, Caste Awan,
Resident of Bagra No.1, District Haripur.
2. Abdul Razzaq S/o Eisa Khan, Caste Awan,
Resident of Hamsherian, District Mansehra.
3. Emad Rafique S/o Muhammad Rafique, Caste Tanoli,
Resident of Saba Colony Nawanshehr, District Abbottabd.
4. Zaheer S/o Wazir Muhammad, Caste Tanoli,
Resident of Chamati, District Abbottabad.
5. Shehzad Rafique S/o Muhammad Rafique, Caste Tanoli,
Resident of Saba Colony Nawanshehr, District Abbottabad.

...Respondents

Counsel for the State/Appellant.	---	Malik Akhtar Hussain Awan, Assistant Advocate General, Khyber Pakhtunkhwa.
Counsel for the Respondent.No.1.	---	Mr. Abdur Rauf Afridi, Advocate
Case FIR No, date & Police Station.	---	No.317 dated 17.07.2013 P.S Nawanshehr, District Abbottabad.
Date of impugned Judgment.	---	21.06.2014.
Date of institution	---	22.09.2014.
Date of hearing	---	10.04.2019.
Date of decision	---	10.04.2019.

~~~~~

**JUDGMENT.**

*SYED MUHAMMAD FAROOQ SHAH-J...* Appeal under section 417 (2) Cr.P.C, against the impugned order dated 21.06.2014, rendered by the learned Additional Sessions Judge-VII, Abbottabad, has been preferred by the State through Advocate General Khyber

Pakhtunkhwa, with a prayer to set aside the same and the accused/respondents be convicted and sentenced in accordance with law.

2. Arguments heard. Record perused.

3. The respondents alongwith absconding co-accused were charged vide FIR No.317, dated 17.07.2013, under section 17 (3) of The Offences Against Property (Enforcement of Hudood) Ordinance, 1979, section 452/411/34 PPC read with section 13 AO at police station *Nawanshehr* by the complainant, hence accused/respondents were arrested and trial commenced in the Court of learned Additional Sessions Judge-VII, Abbottabad. During pendency of trial, the respondents above named were acquitted by the learned trial Court under section 265-K Cr.P.C vide Order announced on 21.06.2014, impugned herein.

4. For the sake of convenience, penultimate paragraph 4 of impugned order is reproduced hereinbelow:-

*“ The record shows that no identification parade of the accused from the complainant has been conducted so far. The record is completely silent about previous conviction of the accused. The complainant recorded statement on 31.01.2014 in this court and expressed no objection on acquittal of the accused. The accused are charged for non-compoundable offences but in view of statement of the complainant there is no probability of conviction of the accused. The only incriminating material is part recovery effected from some accused but the same is doubtful and in view of compromise the learned Peshawar High Court also granted post arrest bail to co-accused Hamad Ali vide order dated 14.10.2013.”*

5. Learned State counsel without controverting the reasons of acquittal recorded by the learned trial Court, submits that observation of the learned trial Court with regard to the fact that the complainant had effected compromise with the accused, therefore, there was no probability of conviction of accused, even if prosecution is allowed to produce evidence, is against the spirit of law. Moreso, the snatched gold, wrist watches and money were identified by the complainant during proceedings in Court but the learned trial Court has not considered this significant factor at all which is against the norms of justice. Learned State counsel argued that slipshod conclusion of learned trial Court shows that probably the learned trial Judge has failed to comprehend the case and nature of offence in true perspective and its impact on society in general.

6. Conversely, learned counsel representing the respondents supported the impugned order with vehemence and submitted that the impugned order is speaking one, well-reasoned, elaborate and does not warrant interference by this court.

7. Ocular account of prosecution case hinges on sole testimony of the complainant, who had amicably settled the dispute with the respondents outside the court. Section 265-K Cr.P.C is empowering the trial Court to acquit the accused at any stage of the proceeding, if after hearing the prosecution and the accused it considers that there is no probability of the accused being convicted of any offence. The legislator, in its wisdom, had not left the question of recording evidence as a condition before taking action under the said provision. Undoubtedly, the learned trial Court had ample powers to acquit the accused, even if the witnesses were not examined as the provisions of sections 265-K Cr.P.C were meant to prevent

rigours of a prolonged trial when chances of conviction are not visible. In the present case, the complainant had exonerated the accused persons in commission of offence, therefore, it was sheer futile exercise to linger on criminal proceedings in Court, more particularly, the trial shall not culminate on conviction of the respondents. The discretion exercised by the learned trial Court is based on reasons that there is no probability of the accused being convicted of the offence; admittedly, the case shall not end on conviction of respondents, therefore, proceedings against them would be an abuse of the process of the Court. Undeniably, charged offence is non-compoundable and the learned trial Court without invoking the provisions of section 345 of the Code, for the sake of dispensation of justice had applied section 265-K Cr.P.C for acquittal of the respondents with plausible reasons reflected in paragraph 4 of the impugned order, reproduced as supra.

8. Having heard the learned counsel for the State, we don't find any factual or legal infirmity in the order passed by the learned trial Judge. It need no reiteration that it is often said that delay in dispensation of justice amounts to denial of justice. Perplexity of technicalities is perhaps one of the major reasons for the delay. This Court being Court of justice has kept the balance of justice on even scale. The learned trial Court must not shatter the trust reposed by general public in them by involving themselves in procedural technicalities. Their prime duty is to administer substantial justice, which should not only be done but also seen to have been done, at the earliest.

9. It is not out of context to mention that scope of appeal against acquittal of accused is considerably limited. Order impugned through the appeal is based on correct appreciation of facts and law, does not call for interference by this Court.

Suffice it to say that there is hardly any infirmity, illegality or perversity in the impugned order of acquittal, which being based on sound and cogent reasons is accordingly maintained. In the result, the appeal is dismissed having no consideration for merits.

**JUSTICE SHAUKAT ALI RAKHSHANI**  
JUDGE

**JUSTICE SYED MUHAMMAD FAROOQ SHAH**  
JUDGE

**Peshawar the**  
**10<sup>th</sup> April of 2019**  
**M.Ajmal/\*\*.**

Approved for reporting

**Justice Syed Muhammad Farooq Shah**