

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Shariat Appellate Jurisdiction]

**PRESENT:**

**Raja Saeed Akram Khan, J.**

**Ghulam Mustafa Mughal, J.**

Criminal Appeal No.45 of 2019

(Filed on 26.06.2019)

1. Matloob Hussain s/o Muhammad Hussain, r/o Khaliqabad, Tehsil and District Mirpur, AJ&K.
2. Muhammad Ishaq s/o Muhammad Hussain, r/o Sangote, Tehsil and District Mirpur.

....APPELLANT

**VERSUS**

1. Shamim Ara w/o Tahir Abdullah, r/o House No.250, Sector B/5, Mirpur.
2. Jamila Shafi d/o Muhammad Shafi, r/o House No.94-A, Sector G/1, Part I, Tehsil and District Mirpur.
3. State through Additional Advocate-General Circuit, Mirpur.

....RESPONDENTS

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 28.05.2019 in Criminal Appeal No.84 of 2017)

FOR THE APPELLANTS: Mr. Muzaffar Ali Zaffar,  
Advocate.

FOR THE RESPONDENT: Raja Inamullah Khan, Advocate-  
General and Mr. Muhammad  
Haleem Khan, Advocate.

*Date of hearing:* 19.02.2020

**JUDGMENT:**

**Ghulam Mustafa Mughal, J.**— The captioned appeal has been directed against the judgment dated 28.05.2019, passed by the Shariat Appellate Bench of the High Court in Criminal Appeal No.84 of 2017.

2. The facts forming the background of the captioned appeal are that Shamim Ara and Jamila Shafi, complainant/respondents, herein, filed an application against the appellants, herein, at Police Station City Mirpur, whereupon, FIR No.52/2009 in the offences under sections 457, 427, 506 (2), APC, read with section 14 EHA, was registered against the appellants, herein, on 17.03.2009. However, the Police did not submit the *challan* and referred the matter to the local Magistrate for cancellation of the FIR. Thereafter, the complainant/respondent, herein, filed a private complaint in the above mentioned offences before the Tehsil Court of Criminal Jurisdiction Mirpur on 06.12.2014. The case was at the stage of

evidence when the accused/appellants, herein, moved an application under section 249-A, Cr.P.C. for their acquittal. The objections were filed on the aforesaid application and the learned trial Court after hearing the respondents/appellants, herein, accepted the application and acquitted the accused/appellants, herein, of the charges vide judgment/order dated 29.02.2016. Feeling aggrieved, Shamim Ara, the complainant/respondent, herein, filed an appeal before the learned Shariat Appellate Bench of the High Court on 14.04.2017. The learned Shariat Appellate Bench of the High Court after hearing the parties through the impugned judgment dated 28.05.2019, has accepted the appeal and remanded the case to the trial Court for fresh decision on merit after hearing both the parties.

3. Mr. Muzaffar Ali Zaffar, the learned Advocate appearing for the appellants argued that Jamila Shafi, respondent No.2, herein, filed a private complaint under sections 457, 427 and 506, APC, read

with section 14 EHA, before the Tehsil Court of Criminal Jurisdiction Mirpur on 06.12.2014. The learned Advocate further argued that the appellants, herein, moved an application for their acquittal under section 249-A, Cr.P.C., which was accepted by the learned trial Court vide order dated 29.02.2016. The learned Advocate further argued that the order passed by the trial Court dated 29.02.2016, was challenged by Shamim Ara, respondent, herein, before the learned Shariat Appellate Bench of the High Court by way of appeal on 14.04.2017, which was accepted through the impugned judgment and the case was remanded to the learned trial Court for fresh proceedings. The learned Advocate submitted that the learned Shariat Appellate Bench of the High Court has wrongly interfered in the discretion exercised by the learned Tehsil Court of Criminal Jurisdiction.

4. Raja Inamullah Khan, Advocate-General and Mr. Muhammad Haleem Khan, Advocate,

appearing for the respondents have defended the impugned judgment and submitted that the order was passed by the learned trial Court without hearing the complainant as well as the State, hence, the same was violative of section 249-A, Cr.P.C.

5. We have heard the learned counsel for the parties and have gone through the record of the case. A perusal of the record reveals that Jamila Shafi, respondent No.2, herein, filed a private complaint against the appellants, herein, before the Tehsil Court of Criminal Jurisdiction Mirpur on 06.02.2014 in the offences under sections 457, 427 and 506, APC, read with section 14 EHA. Initially an FIR was also lodged in the same offences but the Police in the investigation found the allegations are untrue and referred the matter to the local Magistrate for cancellation of the FIR, whereupon, respondent No.2, herein, filed a private complaint which was dismissed by the learned trial Court and the appellants, herein, were acquitted

of the charge. Against the order of the learned trial Court, an appeal was filed by Shamim Ara, respondent, herein, before the learned Shariat Appellate Bench of the High Court on 14.04.2017. The learned Shariat Appellate Bench of the High Court through the impugned judgment dated 28.05.2019, accepted the appeal and remanded the case to the learned trial Court for fresh decision on the ground that neither the complainant nor her counsel has been heard which is mandatory requirement of section 249-A, Cr.P.C. We are of the view that the impugned judgment is in line with the provisions contained in section 249-A, Cr.P.C. For ready reference, the said section is reproduced hereunder: -

“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.”

A perusal of the above reproduced provision of law makes it crystal clear that order under section 249-A can only be passed after hearing the prosecutor, the accused and after recording the reasons. In the present case, neither the State nor the counsel for the complainant was heard, therefore, the illegality committed by the learned trial Court has rightly been pointed out by the learned Shariat Appellate Bench of the High Court while remanding the case for fresh decision.

In view of the above finding no force in this appeal, the same is, hereby, dismissed. No order as to costs. As the matter is pending since long, therefore, the learned trial Court is directed to decide the complaint within a period of 2 months.

**JUDGE**

**JUDGE**

Mirpur.  
19.02.2020

JII