IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL No. 125 OF 2023
(Against the judgment dated 05.06.2023 passed by the High Court, in writ petition No. 307 of 2017).

Hammad Tariq s/o Muhammad Shareef Tariq r/o House No. A/4, Sector C-3, Mirpur.

…Appellant

VERSUS

Additional Sessions Judge, Mirpur and others.

…Respondents

Appearances:

For the Appellant:	Mr. Kamran Tariq, Advocate.
For the Respondents:	Mr. Ahmed Saad, Asst. Advocate-General and Mr. Kamran Riaz Butt, Advocate.
Date of hearing:	18.11.2024

JUDGMENT:

***Raza Ali Khan, J*:-** This appeal, by leave of the Court addressed against the judgment of the High Court dated 05.06.2023, whereby the writ petition filed by the appellant, herein, was dismissed.

2. The gist of the facts is that a case in the offences under sections 489-F, 419 and 420 APC, was registered against accused-respondents No.3 and 4. After completion of investigation, the police submitted challan before the competent Court. The case was at the stage of recording evidence, when the accused-respondents filed an application under section 249-A, Cr.P.C, for their acquittal. The application was allowed and they were acquitted of the charges vide order dated 27.07.2016. The appellant filed a revision petition before the Additional Sessions Judge, Mirpur, on 10.10.2016, which was dismissed being incompetently filed. Thereafter, the writ petition filed by the appellant before the High Court also stood dismissed through the impugned judgment, hence, this appeal by leave of the Court.

3. Mr. Kamran Tariq, Advocate, the learned counsel for the appellant contended that the judgments recorded by the Courts below are against law and the facts. The learned trial Court wrongly acquitted the accused under section 249-A, Cr.P.C. If at all it is assumed that on the basis of compromise regarding offence under section 489-F, Cr.P.C. is not attracted even then the offences under sections 419 and 420 are there and there is a probability of the accused being convicted, hence, the ingredients of section 249-A are not fulfilled in this case. He further argued that the Courts below erred while holding that the appeal lies against the acquittal order passed under section 249-A, Cr.PC, whereas, the latest

view of the Courts is that the revision petition is competent. He further argued that the Courts below have also not considered various judgments of this Court as well as from Pakistan jurisdiction reported as *1981 Pcr.LJ 458, 2019 SCR 162, 1987 PCr.LJ 1633, 2005 SCMR 1544, 1989 PCr.LJ 1745, 2012 PCr.LJ 507 and 1980 PCr.LJ, 191*. He finally prayed for acceptance of appeal.

4. Conversely, Mr. Kamran Riaz Butt, the learned Advocate appearing for the respondents submitted that the learned High Court has rightly passed the impugned judgment which does not call for any interference by this Court. He submitted that according to section 417 Cr.PC, appeal lies against the order of acquittal before the High Court, therefore, the learned Additional Sessions Judge has rightly dismissed the revision petition which was upheld by the High Court. He added that under section 439(5), Cr.PC, where an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed, therefore, the revision against the order of the Civil Judge empowered as Magistrate 1st class Court No. II, Mirpur was incompetent. In support of his submissions, the learned Advocate placed reliance on the cases reported as *2014 SCR 735, 2002 PCr.LJ 513, 2016 PCr.LJ 1457, 2008 PCr.LJ 1067* and prayed for dismissal of the appeal.

5. We have heard the learned counsel for the parties and carefully examined the record made available. The learned counsel for the appellant presented extensive arguments along-with citing different judgments, but the essence of these submissions can be summarized into the following three points:

1. The trial Court's decision to acquit under Section 249-A, Cr.P.C., was premature, as there was sufficient basis to proceed under Sections 419 and 420, Cr.P.C., despite the compromise on Section 489-F, Cr.P.C.

2. The appropriate remedy for challenging the acquittal was a revision petition rather than an appeal, as supported by case law indicating that such acquittals are better addressed in revision proceedings.

3. Acquittals granted under Section 249-A, Cr.P.C., do not hold the same presumption of finality or "double innocence" as those granted after a full trial, making them more amenable to appellate scrutiny.

6. The first argument of the learned counsel for the appellant was that the acquittal of the accused by the trial Court under Section 249-A, Cr.P.C., was premature and legally unsound. He submitted that even if the compromise between the parties regarding the offence under section 489-F, Cr.P.C., diluted the applicability of that provision, the charges under Sections 419 and 420, Cr.P.C., which deal with fraud and dishonest inducement, warranted prosecution through a full-fledged trial. The learned counsel emphasized that the allegations of fraudulent and dishonest conduct required evidence to be fully examined and tested during trial proceedings, as there existed a reasonable probability of conviction under these provisions. It may be put that section 249-A, Cr.P.C., empowers a trial Court to acquit an accused at any stage of the proceedings if it is satisfied that the charge is groundless or that the evidence is insufficient to justify further proceedings. This provision serves a dual purpose: on one hand, it safeguards the accused from the ordeal of an unwarranted trial where the prosecution has failed to establish a prima facie case; on the other hand, it prevents the wastage of judicial

resources on cases where conviction is improbable. However, this discretion must be exercised judiciously and not as a matter of routine. In the present case, the trial Court exercised its powers under Section 249-A, Cr.P.C., and acquitted the accused, citing a lack of sufficient evidence to justify continuation of the trial. The trial Court, in its order, observed that the allegations under Sections 419 and 420, Cr.P.C., were unsupported by concrete evidence, making it improbable for the prosecution to succeed. The appellant's counsel relied on case law, particularly ***2012 PCr.LJ 507***, to argue that acquittals under Section 249-A, Cr.P.C., must be based strictly on the absence of prima facie evidence and should not be granted lightly. The cited case law emphasizes that while the trial Court has wide discretion under Section 249-A, Cr.P.C., this power must be exercised in circumstances where the evidence on record clearly fails to establish a case for conviction. However, a closer examination of the principles laid down in ***2012 PCr.LJ 507*** supra reveals that this precedent does not curtail the trial Court's discretion to determine whether the evidence presented by the prosecution justifies further proceedings. On the contrary, it upholds the trial Court's authority to terminate proceedings at an early stage if the prosecution's evidence does not meet the minimum threshold required for a conviction. In the instant case, the trial Court assessed the material on record and found it insufficient to substantiate the charges of fraud and dishonesty under Sections 419 and 420, Cr.P.C. The appellant's contention that the charges required a full-fledged trial overlooks the essence of Section 249-A, Cr.P.C., which is designed to avoid unnecessary trials in cases where the prosecution's evidence is inherently weak. The trial Court is not obligated to conduct a trial

merely because charges have been framed; rather, it must critically examine whether the evidence warrants the continuation of proceedings. In this case, the trial Court found that the evidence did not support the allegations of fraudulent or dishonest conduct, thereby justifying its decision to acquit the accused. In our view, the trial Court acted within its lawful authority and exercised its discretionary powers judiciously. The decision to acquit under Section 249-A, Cr.P.C., was based on a sound evaluation of the evidence and was not influenced by any malafide intent or procedural impropriety. The appellant's argument that the acquittal was premature lacks merit, as the trial Court's order aligns with the established principles governing the exercise of discretion under Section 249-A, Cr.P.C. Accordingly, the argument advanced by the learned counsel for the appellant on this point is untenable and does not warrant interference by this Court.

7. The appellant's second argument revolved around the procedural aspect of challenging the acquittal order passed under Section 249-A, Cr.P.C. The learned counsel for the appellant contended that instead of filing an appeal, a revision petition was the appropriate remedy to assail such an order. To substantiate this position, reliance was placed on precedents such as ***2012 PCr.LJ 507*** supra and ***1980 PCr.LJ 191***, which, according to the appellant, indicated that revision petitions could be competent in certain scenarios involving acquittals under Section 249-A, Cr.P.C. This line of argument sought to question the procedural validity of the approach adopted by the respondents in contesting the acquittal. To address this contention, it is essential to examine the procedural framework provided under the Criminal Procedure Code,

1898, which governs remedies against acquittal orders. Section 417, Cr.P.C., explicitly provides for the filing of an appeal against an order of acquittal. This section confers a statutory right upon an aggrieved party, including private complainants, to challenge an acquittal before the appellate forum. Conversely, Section 439(5), Cr.P.C., imposes a categorical bar on the filing of a revision petition in cases where an appeal lies but has not been pursued. This procedural arrangement underscores the importance of adhering to the statutory remedies provided by law, ensuring that parties follow a structured and disciplined approach in seeking redress. The reliance by the respondents on case law such as ***2016 PCr.LJ 1457*** is particularly significant in this context. This precedent unequivocally clarifies that where an appeal is provided as a remedy under Section 417, Cr.P.C., a revision petition cannot be entertained. The judgment emphasizes that the bar under Section 439(5), Cr.P.C., is absolute, thereby preventing the substitution of an appeal with a revision petition. Similarly, the decision reported as ***2008 PCr.LJ 1067*** reinforces the principle that remedies for challenging an acquittal are governed strictly by statutory provisions. This case reiterated that revision petitions cannot serve as an alternative to the appellate remedy expressly provided under Section 417, Cr.P.C. The rationale behind this procedural framework is evident: it seeks to maintain judicial discipline and prevent the circumvention of statutory remedies. By ensuring that parties exhaust available remedies before invoking revisional or higher judicial forums, the law aims to prevent unnecessary judicial congestion and safeguard the sanctity of procedural hierarchy. The appellant's reliance on ***2012 PCr.LJ 507*** supra and ***1980 PCr.LJ 191*** supra does not alter this established legal position.

While these cases may discuss the circumstances under which revision petitions could be entertained, they do not override the express provisions of the Criminal Procedure Code, particularly the bar imposed by Section 439(5), Cr.P.C., in the presence of an appellate remedy. The appellant's attempt to bypass the appellate procedure not only contravenes statutory provisions but also undermines the procedural discipline that the law seeks to uphold. In our view the respondents' arguments regarding the incompetence of the revision petition are to be legally sound and supported by authoritative judicial precedents. The statutory bar under Section 439(5), Cr.P.C., is absolute and leaves no room for ambiguity. The remedy for challenging an acquittal, as outlined under Section 417, Cr.P.C. i.e. appeal against acquittal must be adhered to, and any deviation from this established course cannot be entertained. Consequently, the appellant's argument on this point is hereby overruled.

8. The appellant's third argument centers on the nature and scope of acquittals under Section 249-A, Cr.P.C., and their susceptibility to appellate scrutiny. He contended that such acquittals, unlike those granted after a full-fledged trial, do not carry the presumption of "double innocence" and, as a result, are more vulnerable to interference by appellate courts. To bolster this argument, reliance was placed on the case law ***2005 SCMR 1544***, which distinguishes between acquittals under Sections 249-A and 265-K, Cr.P.C., and those arising from the conclusion of trial proceedings. The appellant sought to establish that this distinction implies a lesser sanctity for acquittals under Section 249-A, thereby justifying a more rigorous appellate review. It is indeed a recognized principle that acquittals

granted under Sections 249-A and 265-K, Cr.P.C., differ in nature from those resulting from a trial. The latter involve a comprehensive evaluation of evidence after its full presentation and carry a presumption of "double innocence," reflecting the high standard of proof required to overturn such decisions. In contrast, acquittals under Section 249-A, Cr.P.C., are based on a preliminary assessment of the sufficiency of evidence and do not benefit from this heightened presumption. In the present case, the trial Court exercised its discretion under Section 249-A, Cr.P.C., to acquit the accused on the grounds that the evidence presented was insufficient to warrant further proceedings. The appellant's argument overlooks the fact that the trial Court's findings were rooted in an assessment of the prosecution's failure to provide substantive evidence to support the charges. The absence of malafide intent, procedural irregularities, or arbitrariness in the trial Court's decision further reinforces its validity. The respondents, in their arguments, relied on the precedent set in ***2008 PCr.LJ 1067***, which affirms the validity of acquittals under Section 249-A, Cr.P.C., when they are based on a lack of evidence. This case emphasized that the discretionary power granted by Section 249-A is an integral part of the criminal justice process, aimed at ensuring that cases lacking merit are not pursued unnecessarily. It also clarified that such acquittals, while subject to judicial review, are not to be interfered with unless it is demonstrated that the trial Court acted arbitrarily, with malafide intent, or in a manner inconsistent with the principles of justice. The appellant's reliance on ***2005 SCMR 1544*** to argue for a more rigorous scrutiny of acquittals under Section 249-A, Cr.P.C., must be understood in its proper context. While this precedent acknowledges the distinction between different types of acquittals, it does not suggest that orders

under Section 249-A are inherently flawed or warrant automatic interference. Instead, it underscores the principle that each case must be assessed on its own merits, with the appellate Court intervening only when there is a demonstrable error in the trial Court's exercise of discretion. In the case in hand, the trial Court's decision was based on a reasoned and lawful exercise of its discretionary powers. The lack of substantive evidence supporting the prosecution's allegations justified the acquittal, and no procedural or substantive irregularities have been shown to undermine the validity of this decision. The appellant's contention that such acquittals lack sanctity or are more susceptible to appellate scrutiny does not align with the principles established by case laws and the objectives of Section 249-A, Cr.P.C, therefore, this argument has also got no substance.

In view of the above, this appeal stands dismissed. There shall be no order as to costs.

JUDGE JUDGE

Mirpur,
18.11.2024