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

PRESENT:

MR. JUSTICE RAZA ALI KHAN

CRIM. PLA No. 29 OF 2024
(On appeal from the judgment of the High Court dated 25.09.2024, passed in Criminal Appeal No. 169 of 2022)

The State through Advocate General, Azad Govt. of the State of Jammu and Kashmir, Muzaffarabad.

…Petitioner(s)

VERSUS

Muhammad Altaf Khan s/o Muhammad Afzal Khan, caste Taizial, r/o Rangla, Assistant Store Keeper (time) Chikar Noon Bagla.

…Respondent(s)

Appearances:

For the State:	Sheikh Masood Iqbal, Advocate-General.
For the Respondent:	Raja M. Shafat Khan, Advocate.
Date of hearing:	07.02.2025

JUDGMENT:

***Raza Ali Khan, J*:-** The instant petition stems from the judgment of the High Court dated September 25,

2024, whereby, the appeal filed by the State (*petitioner herein*), against the acquittal order of the learned Sessions Judge/ Judge Anti-Corruption, Muzaffarabad, has been dismissed.

2. A criminal case was lodged against the accused-respondent in the offences under Sections 109, 409, 467, 468 and 471, APC as well as Section 5(2) of the Anti-Corruption Act, pursuant to FIR No. 08/1983, registered on August 27, 1983, at Anti-Corruption Police Station, Muzaffarabad. After completion of the trial, the learned Judge, Anti-Corruption, Muzaffarabad, vide judgment dated June 4, 1999, convicted the accused-respondent and sentenced him to five years rigorous imprisonment under Section 409 APC, coupled with a fine of Rs. 400,000/-, four years imprisonment under Section 468, APC with an identical sum of fine, and five years imprisonment under Section 5(2) of the Anti-Corruption Act, with a similar monetary penalty. Dissatisfied with the outcome, the accused-respondent filed an appeal before the High Court. During the course of appellate proceedings, it was noted that the prosecution had failed to secure the requisite sanction for institution proceedings, thereby vitiating the case. Consequently, the prosecution was granted leave to initiate fresh proceedings upon obtaining the necessary approval. Accordingly, a new challan was presented before the learned Judge, Anti-Corruption, Muzaffarabad and the case was resumed. However, during the pendency of the case, the devastating earthquake on October 8, 2005, resulted in the destruction of the court records. Subsequently on May 17, 2017, the prosecution filed an application for reconstruction

of the record, prompting the trial court to order the framing of the first charge on January 28, 2021. While the case advanced to the stage of presenting prosecution evidence, the testimonies of several prosecution witnesses could not be recorded as they had passed away. In response, the accused respondent invoked the provisions of Section 265-K of the Code of Criminal Procedure (Cr.P.C.), seeking acquittal on the ground that substantive evidence was unavailable, this plea was accepted by the learned trial Court. Dissatisfied, with the order the petitioner challenged the order before the High Court; however, the appeal was dismissed through the impugned judgment dated September 25, 2024, thereby, affirming the acquittal of the accused-respondent.

3. Sheikh Masood Iqbal, the learned Advocate-General appearing for the State, contended that the impugned judgments delivered by the learned High Court as well as the learned Judge, Anti-Corruption, Muzaffarabad, are contrary to the established legal principles of law and the factual matrix of the case. He argued that both the lower forums erred in permitting the application under Section 265-K Cr.P.C., given that as the accused-respondent was directly implicated in the embezzlement of an amount of Rs. 912,486/-. Moreover, he maintained that the prosecution had sufficiently established its case, and that, had the evidence been properly recorded, the charges against the accused-respondent would have been unequivocally substantiated. Emphasizing the legal and factual deficiencies in the impugned judgments, he urged for grant of leave to proceed.

4. Conversely, Raja Muhammad Shafat Khan, Advocate, while citing on various precedents from this Court and relevant Pakistan jurisprudence, including *PLD 2024 SC 273, PLD 2022 SC 562, 2022 SCMR 1861, PLD 1993 SC 247, PLD 2002 SC 572, 2011 SCMR 484, 2011 SCMR 646, 2006 SCMR 1846,* and *2020 SCMR 2129*, contended that the trial Court is vested with the authority under Section 265-K Cr.P.C. to acquit an accused at any stage of the proceedings. The learned counsel maintained that such powers may be exercised when the Court, after due consideration, concludes that either no charge could be framed due to lack of jurisdiction or that the available material is insufficient to constitute an offence. In the present case as no prosecution witness remained available to testify the condition for such an exercise of power clearly met. He further argued that it is a well-established principle of law that a person who has been tried and finally acquitted cannot be subjected to retrial for the same offence, as such an action would violate the fundamental principles of justice. In light of these submissions, he urged that the petition be dismissed being devoid of any merits.

5. Having carefully considered the arguments advanced by the learned counsel for the parties and having meticulously examined the record, it is evident that the present matter pertains to the acquittal of the accused-respondent under Section 265-K, Cr.P.C. The Criminal Procedure Code, 1898, endows trial Courts with inherent jurisdiction through Sections 249-A and 265-K, empowering them to acquit an accused at any stage of judicial proceedings, provided that reasons for such an acquittal are

duly recorded and that parties are afforded an opportunity to be heard. The phrase "*at any stage*" as employed in these provisions, encompasses phases of the proceedings, including pre- and post-framing of charge, as well as after recording evidence. The exercise of such jurisdiction is justified when the Court determines that no charge substantiated evidence remains to sustain the charge against accused or where the material available on record is insufficient to establish an offence or where a framed charge is deemed groundless, the Courts empower to act. Additionally, this authority may be exercised when the continuation of the trial would amount to an abuse of process, or when after a full trial there remains no probability of conviction. In the present case, the record unequivocally demonstrates that although the challan lists 57 prosecution witnesses, a significant number have since passed away, including the complainant, as confirmed by the reports of the serving constables. Moreover, the evidence of several prosecution witnesses has been formally closed, while others remain untraceable at their given addresses. The catastrophic earthquake of October 08, 2005, further compounded these difficulties by causing the complete destruction of the case record, with no recovery memo documentation available. The witnesses who might have corroborated the recovery memos have also died. Under such exceptional circumstances, even a full-fledged trial would be unlikely to result in conviction. It is precisely for these reasons that the legislature has vested the Courts with the authority under Section 265-K Cr.P.C., to ensure that the legal process is not abused, the sanctity of the Criminal

Justice System is preserved, and individuals are shielded from unwarranted, vexatious, and frivolous prosecutions, while also safeguarding the invaluable time and resources of the Court. The learned Advocate for the respondent rightly relied upon a relevant case from Pakistan Jurisdiction titled *Abbas Haider Naqvi and another vs. Federation of Pakistan & others*[1], wherein, Apex Court of Pakistan held as under:

> *"Ordinarily, an accused, who invokes section 265-K, Cr.P.C for his acquittal, pleads that there is no probability of his being convicted of any offence in the case on any of the following four grounds: (i) that even if the facts alleged by the prosecution are taken to be true on their face value, they do not make out/constitute the commission of any offence by the accused, (ii) that there is no evidence or incriminating material on record of the case in support of the commission of the alleged offence by the accused; (iii) that the evidence or incriminating material collected during investigation in support of the commission of the alleged offence and proposed to be produced during trial is insufficient and, even if recorded, will not sustain conviction of the accused, of any offence in the case; and (iv) that the prosecution evidence so far recorded does not make out a case for conviction of the accused, of any offence in the case and the remaining prosecution evidence, even if recorded, will not improve the prosecution case against the accused in any manner"*

Similarly, another case from the Supreme Court of Pakistan i.e. *Ammad Yousaf vs. The State & another*[2] is also of vital importance on the subject, wherein it has been held as under:

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[1] [PLD 2022 SC 562]
[2] [PLD 2024 SC 273]

"The Criminal Procedure Code, 1898 ("Cr.P.C.") has granted an inherent jurisdiction by virtue of sections 249-A and 265-K to the trial courts, as the case may be, to acquit any or all accused at any stage of the judicial proceedings for reasons to be recorded, after providing an opportunity of hearing to the parties. The words "any stage" used in both the sections include the stages before or after framing of the charge or after recording of some evidence. Such power can only be exercised where the Court is of the opinion that no charge could be framed because of lack of jurisdiction; because the material available before it is insufficient for the purposes of constituting an offence; that if charge is framed, but the Court considers it to be groundless and to allow the prosecution to continue with the trial would amount to an abuse of process; or that in all circumstances, where there is no probability of conviction of the accused, even after a full-fledged trial. Thus, if circumstances for exercise of inherent powers exist, the Court must use such powers at any stage of the proceedings on its own or upon an application by the accused, provided that an opportunity of hearing is afforded to the parties before making any order. The power assigned to the Courts by the legislature is to avoid the abuse of process of the Court; to protect the integrity of the criminal justice system; to safeguard a person involved in the case from the agony of a purposeless, malicious, and frivolous criminal prosecution; or otherwise, to secure the ends of justice. The exercise of the inherent powers is mandatory in nature; therefore, any departure therefrom would be a violation of the substantive provisions of law and would prejudice the interests of the accused, which is an illegality. If the Court considers that the available material is sufficient to proceed with the trial and refuses to quash the judicial proceedings, it does not preclude the Court from exercising its inherent power subsequently after recording some evidence or surfacing any material for the purpose of quashing the proceedings. However, the exercise of such power by the Courts must be

in exceptional circumstances, with great caution and by applying its mind judiciously."

6. Furthermore, it is a well-established principle of criminal jurisprudence that once an accused has been tried for an offence and ultimately acquitted, he cannot be retried for the same offence, as such an action flagrantly violates the doctrine of ***autrefois acquit*** enshrined within the criminal justice system. This principle is grounded in the fundamental right against double jeopardy, ensuring that no individual shall be subjected to repeated prosecution for the same offence (vex twice) thereby upholding the integrity of judicial proceedings and preventing the abuse of legal process. The underlying rationale is to protect individual from the interminable ordeal of litigation, unwarranted harassment, and the oppressive mechanism of the State, ensuring that the finality of judicial determinations is respected and preserved. In this regard, reliance may be placed on the case reported as *Sherin Bacha & others vs. Namoos Iqbal & 3 others*[3], wherein it was emphatically observed that once an accused has undergone a full-fledged trial and has been acquitted, whether on merits or on legal technicalities, he cannot be subjected to a subsequent trial for the same offence. The relevant portion of the judgment is reproduced hereunder for better appreciation: -

"This judgment was not challenged by the respondents' side in any higher forum nor an attempt was made to move any other Court or forum for re-examination of the findings rendered by the Criminal Court in the aforementioned judgment of acquittal. The Constitution and the Code of Criminal Procedure read with General

[3] [PLD 1993 SC 247]

> *Clauses Act do not permit the re-trial of an offence in which a person which having once been tried as accused stands finally acquitted. The said judgment by the Magistrate having attained finality the same accused cannot be re-tried for the same offence in the complaint case. Accordingly for this reason alone this appeal merits to be accepted. The same is allowed with the result that the impugned judgment of the High Court remanding the case for fresh trial in accordance with the law is set aside."*

In view of foregoing discussion, its my considered opinion that the learned High Court rightly delivered the impugned judgment maintaining the acquittal order passed in favor of accused-respondent. The findings recorded therein are sound and do not warrant any interference. Moreover, the learned Advocate General has not established any question of public importance justifying the grant of leave. Consequently, the petition for leave to appeal is hereby dismissed.

JUDGE

Muzaffarabad,
11.02.2025