

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
(JUDICIAL DEPARTMENT)

Crl. Revision No. 127 of 2018

(Rab Nawaz Vs. Mubri Khan etc.)

JUDGMENT

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| Date of hearing: | 30.01.2019 |
| Petitioner by: | Raja Muhammad Faisal Ghani Janjua, Advocate. |
| State by: | Mr. Umer Hayat Gondal, Additional Prosecutor General. |
| Complainant by: | Malik Ihsan Haider, Advocate. |

Muhammad Tariq Abbasi, J – This revision petition calls in question, the judgment dated 01.03.2014 and order dated 09.02.2018, respectively passed by the learned Judicial Magistrate Section-30, Talagang and learned Additional Sessions Judge, Talagang, District Chakwal.

2. Through the judgment, in a case, got registered by the petitioner, against Mubri Khan, Muhammad Kamran, Ahmed Khan, and Muhammad Sher (**hereinafter referred to as the respondents**), through FIR No. 28, dated 11.04.2011, under Sections 380/448/411 PPC, at Police Station Lawa, Tehsil Talagang, District Chakwal, not only the respondents were acquitted of the charge, but the petitioner was also directed to pay compensation of Rs.25,000/- to them, as provided under Section 250 Cr.PC. Whereas through the order, an appeal preferred by the petitioner, challenging imposition of the above said compensation, upon him, has been dismissed.

3. The above mentioned case was got lodged, by the petitioner, against the respondents, with the precise charge, that they while armed with lethal weapons, had entered into a 'Haveli', belonging to the petitioner and stolen away the articles, lying therein. The trial was held in the court of learned Magistrate Section-30, Talagang and finally, the judgment dated 01.03.2014 was pronounced, whereby not only the respondents were acquitted of the charge, but the petitioner was also burdened under Section 250 Cr.PC and directed to pay compensation of Rs.25,000/- to the respondents.

4. There is no denial of the fact that if a Magistrate, on finalization of a criminal trial, comes to the conclusion that accusation/charge, against an accused was false, frivolous or vexatious, then he, in addition to an order of acquittal of an accused, may ask the complainant of the case to pay compensation, upto Rs.25,000/- to such an accused. For reference, the above said provision is reproduced hereunder:-

"250. False frivolous or vexatious accusations. (1) *If in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate, by whom the case is heard [xxxxx] acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may by his order of [xxxxx] acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or if such person is not present direct the issue of a summons to appear and show cause as aforesaid.*

(2) *The Magistrate shall record and consider any cause which such complainant or informant may show and if he is satisfied that the accusation was false and either frivolous or vexatious, may for reasons to be recorded, direct that compensation to such amount not exceeding [twenty five thousand rupees] or if the Magistrate is a Magistrate of the third class not exceeding [two thousand and five hundred] rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.*

[(2-A) The compensation payable under sub-section (2) shall be recoverable as an arrear of land revenue.]

(2-B) When any person is imprisoned under sub-section (2A), the provisions of section 68 and 69 of the Pakistan Penal Code shall, so far as may be, apply.

(2-C) No person who has been directed to pay compensation under the section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account, in awarding compensation to such person in any subsequent civil suit relating to the same matter.]

(3) A complainant or informant who has been ordered under subsection (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made, in case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

*[(5)*****]"*

5. A plain reading of the provision mentioned above, suggests certain pre-requisites, to be followed by a Magistrate, which can be summed as under:-

- i) There should be acquittal of an accused;**
- ii) The Magistrate should be of the opinion that the accusation/charge was false, frivolous or vexatious;**
- iii) The complainant should be called to show cause that why he should not pay compensation to acquitted accused(s);**
- iv) The Magistrate should record, any cause made by the complainant;**
- v) The Magistrate should consider the cause and then record an opinion that cause is unjustified and the accusation/charge was false.**

6. In the matter in hand, admittedly, there is no separate finding of the learned Magistrate, whereby the accusation, leveled by the petitioner, has been declared as false, frivolous or vexatious.

Similarly, no express show cause notice has been issued to the petitioner and even no reply from him has been sought or received. In the judgment of the learned Magistrate, it is mentioned that the petitioner was orally asked for the compensation, but he had failed to make any justification. The said procedure, adopted by the Magistrate, orally, could not be appreciated, because the judicial system does not allow oral criminal proceedings as every act of a court, should be express and unambiguous.

7. Verbal order and proceeding of a court or authority, could not be given any legal value. Even if an order or proceeding by a competent authority is written, but not signed, it is nothing in the eye of law. Section 24-A of General Clauses Act, 1897 provides that any order or direction, given by any authority, office or person must be express i.e. in written form. A written order and proceeding identify their author and recipient. Written form is the only medium, that brings to fore the reason behind an order or proceeding, which may undergo accountability of judicial review. Therefore, an order or proceeding to be in writing is integral to rule of law. Verbal Order has no legal existence and as such does not constitute an order, as envisaged under section 367 Cr.P.C. If any case law in this regard is needed, reference may be made to the dictum laid down in the cases titled "**ZAHID HUSSAIN and another Versus THE STATE**" reported as **1998 SCMR 611** and "**CAPITAL DEVELOPMENT AUTHORITY through Chairman and another Versus Mrs. SHAHEEN FAROOQ and another**" reported as **2007 SCMR 1328**.

The relevant portion of **2007 SCMR 1328**, reads as under:-

"Verbal order has no sanctity in law and such orders are alien to the process of the law and the Courts. All orders passed and acts performed, particularly, by the State/public functionaries and adversely affecting anyone must be in writing, as section 24-A(1) of the General Clauses Act, 1897 envisages that the powers

shall be exercised reasonably, fairly and justly and subsection (2) further makes it necessary that the authority passing orders shall, so far as necessary or appropriate, give reasons for making the orders and unless the order is in writing, the reasons and fairness etc. thereof cannot be ascertained/ adjudged."

8. The foregoing reasons, have made the proceedings in question, ending into imposition of the compensation, to the petitioner, of no legal value. Resultantly, the revision petition in hand is **allowed**, the impugned judgment of the learned Magistrate towards imposition of compensation to the petitioner and the order dated 09.02.2018, passed by the learned Additional Sessions Judge, Talagang, District Chakwal are set aside.

**(Muhammad Tariq Abbasi)
Judge**

Approved for reporting

Abid/-