Form No: HCJD/C

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

Criminal Revision No.140- of 2024

Tassadaq Hanif
Versus
The State

Petitioner's by : **Raja M. Aleem Abbasi, Mr. Muhammad Ahsan Bhoon, Mr.Muhammad Shoaib Shaheen, Mr. Riasat Ali Azad, Mr. Haroon ur Rasheed, Mr. Hafeez Ullah Yaqoob, Mr. Muhammad Rustam Malik, Mr. Muhammad Waqas Malik, Ch. Abdur Rehman Bajwa, Mr. Afrasiab Ahmad Rana, Mr. Saad Abdullah Bhatti, Mr. Shafique-ur-Rehman Khattak, Mr. Muhammad Asif Gujjar, Ch. Ahmed Nawaz, Ms. Nusrat Parveen, Mr. Zahid Mehmood Raja, Mr. Muhammad Bilal Raza, Syed Abaid Ullah Shah, Mr.Muhammad Bilal Mughal, Mr. Khalid Mehmood Khan, Rana Ali Raza, Barrister Malik Talha Ahmed, Shafqat Abbas Tarar and Mujahid Islam Asif, Advocates.**

Respondent's by : **Mr. Adnan Ali and Mr. Muhammad Wajid Munir, Deputy District Public Prosecutors.**
Rana Hassan Abbas, ADPP.
Mr. Nasir Ahmad Shah, State Cousel with Inspector Ibrar Hussain, P.S. Ramna, Islamabad.

Date of decision : **06.02.2025**

AAMER FAROOQ, C.J. - The petitioner is one of the accused in case FIR No.99 dated 08.02.2021 under sections 147, 149, 395, 228, 506, 452, 427, 341, 353, 186 PPC read with section 7 of ATA, 1997 registered with Police Station Ramna, Islamabad. In this regard, report under section 173 Cr.P.C. was filed on 28.05.2021 and there-after the case was kept pending for framing of the charge. The petitioner moved an application under section 265-K Cr.P.C. for acquittal on the basis that the case is

pending for the last about four years without any progress and also that there is no case to answer. In this regard, a categoric stance was taken in the application that the petitioner was not present at the time, when the alleged attack on the Chief Justice Block of this Court took place, as he had cases before another Bench, however subsequently, did go to the Chamber of the then Chief Justice for defusing the mob. In the application, it was also submitted that there is no ocular account that the petitioner was involved in any form of hooliganism. Learned trial court, vide order dated 09.10.2024, dismissed the application of the petitioner, hence the instant petition.

2. Raja Aleem Abbasi, Advocate Supreme Court *inter alia* argued that case is pending for the last four years without even framing of the charge and this amounts to abuse of process of the court and in this regard, accused ought to be acquitted. It was also contended that trial court can make an order of acquittal at any stage of the proceedings. Learned counsel also argued that on the same set of evidence, certain persons nominated in the FIR, were discharged by the police in the report under section 173 Cr.P.C. and where such is the case, there is no case against the petitioner, because on the same set of evidence, he cannot be held liable. It was argued that even-otherwise, it is a case of no evidence inasmuch as there is no ocular account available against the petitioner and that the statements of key witnesses have not been recorded. Reference was made to cases reported as Abbas Haider Naqvi and another Vs. Federation of Pakistan and others (PLD 2022 Supreme Court 562), State through Secretary, Ministry of Interior Vs. Ashiq Ali Bhutto (1993 SCMR 523), Muhammad Sharif Vs. The State (PLD 1999 Supreme Court 1063), The State Vs. Asif Ali Zardari and another (1994 SCMR 798), Mir Shakil Ur Rehman Vs. Messrs Creek Developers (Private) Limited and another (PLD

2019 Sindh 670), Nadeem alias Nanha alias Billa Sher Vs. The State (2010 SCMR 949), Munir Ahmed and another Vs. The State and others (2019 SCMR 79), Muhammad Ramzan Vs. Khizar Hayat and another (2024 SCMR 1085), Notice to Police Constable Khizar Hayat son of Hadait Ullah on account of his false statement: In the matter of (PLD 2019 Supreme Court 527), Mumtaz Ali Shah Vs. Chairman, Pakistan Telecommunication Company Ltd. H.Q. Islamabad and 6 others [2002 PLC (CS) 1647].

3. Mr. Muhammad Ahsan Bhoon, Sr. Advocate Supreme Court also emphasized the fact that no testimony of key witnesses has been recorded; that there is no footage of CCTV camera and/or no evidence against the petitioner. He also emphasized that despite lapse of four years period, charge has not been framed and in such case, accused has to be acquitted.

4. Other senior members of the Bar, appearing on behalf of petitioner, including Mr. Muhammad Shoaib Shaheen, Advocate Supreme Court, Mr. Naeem Ali Gujjar, Advocate/President Islamabad District Bar Association, Mr. Riasat Ali Azad, Advocate Supreme Court, Mr. Haroon ur Rashid, Advocate Supreme Court and Mr. Tassadaq Hanif, Advocate/petitioner in person, adopted the submissions made by learned counsel for the petitioner.

5. The Deputy District Public Prosecutor opposed the contention of the petitioner, however, in response to the query of the Court as to the delay in conclusion of the trial, had nothing to say.

6. Submissions made on behalf of parties have been heard and the documents, placed on record, examined with their able assistance.

7. As noted above, the petitioner is one of the accused in the above mentioned case, which arises out of unfortunate incident, whereby allegedly certain lawyers attacked Chief Justice Block of this Court.

8. The thrust of the arguments by learned counsel for the petitioner is that there is an inexpiable delay in conclusion of case, as it has not yet started.

9. In case reported as Amanullah Khan and others Vs. The State [PLD 1965 (W.P.) Karachi 310], it was observed that where there is an inordinate delay in investigation and prosecution of a criminal case, proceedings are liable to be quashed. Similarly, in case reported as Muhammad Hussain Vs. The State [PLD 1959 (W.P.) Lahore 322], it was observed that protracted proceedings are a mockery of the law and must be deemed to be an abuse of process of Court. It was observed that in such like circumstances, High Court has ample powers to set aside the proceedings in exercise of powers under section 561-A Cr.P.C. It is relevant to state that in the said case, the proceedings were pending for four/five years. In case reported as Malik Fazal Karim Vs. The State [PLD 1957 (W.P.) Lahore 837], while relying on old maxim 'justice delayed is justice dented'. The Lahore High Court observed that where the proceedings have been pending for five long years without any substantial progress, this amounts to abuse of process of law and denial of justice and proceedings be quashed. Similar observations were made in cases reported as Abdul Shafique Vs. The State [PLD 1964 (W.P.) Lahore 246], The Crown Vs. Piru and another (PLD 1955 Sindh 227) and Khiyal Muhammad Vs. The State (2024 SCMR 1490) that where there is a delay in lodging of FIR and recording of statements of witnesses under section 161 Cr.P.C., the delay was held to be fatal.

10. There does not seem to be any justification on part of prosecution for delay in conclusion of trial; almost four years have lapsed without framing of the charge and recording statement of a single witness. The petitioner has been in attendance on every date of hearing and yet no progress in case has been made. The trial has not even started and hence the conclusion thereof is not insight.

11. It is trite law that an application under section 265-K Cr.P.C. can be filed at any stage of the proceedings. Reference is made to case reported as Abbas Haider Naqvi and another Vs. Federation of Pakistan and others (PLD 2022 Supreme Court 562).

12. It is also interesting to observe that in the police report, on the same set of evidence, few other accused persons have been discharged by the Investigating Officer. No plausible justification exists for the same and the petitioner has rightly relied upon '*falsus in uno, falsus in omnibus*'. Reference is made to case reported as Notice to Police Constable Khizar Hayat son of Hadait Ullah on account of his false statement: In the matter of (PLD 2019 Supreme Court 527). In the referred facts and circumstances, the chances of conviction of the petitioner, are next to none, even if trial commences.

13. For what has been stated above, instant petition is allowed and the impugned order dated 09.10.2024 is set aside; consequently, application filed by the petitioner, is accepted and he is acquitted of the charges in the above case.

(CHIEF JUSTICE)

(INAAM AMEEN MINHAS)
JUDGE

Zawar