JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CRIMINAL APPEAL NO. 414 OF 2024

ZEESHAN ABBASI

Vs

SAGHEER AHMAD ETC.

Appellant by	**:**	**Mr. Shahid Shabbir, Advocate.**
Respondents by	**:**	**Mr. Shahzad Siddique, Advocate for the respondents No.1 to 6.** **Rana Hassan Abbas, learned ADPP.** **Mr. Atique Ur Rehman, SI, P.S Bani Gala along with record.**
Date of hearing	**:**	**25.04.2025**

MUHAMMAD AZAM KHAN, J.

1. By this Judgment, I intend to dispose of the above-titled Criminal Appeal arising out of the order dated 28.11.2023 (**"Impugned Order"**) passed by the learned Senior Civil Judge-II/Magistrate Section 30, East-Islamabad (**"Trial Court"**), whereby the Respondents No.1 to 6/Accused were acquitted under Section 249-A Cr.P.C. in FIR No.163/2022 dated 13.04.2022**,** registered under Sections 440, 506, 148, and 149 of the Pakistan Penal Code, 1860 **("PPC")**, with Police Station Bani Gala, Islamabad (**"Subject FIR"**).

2. The brief facts of the case, as per the contents of the Subject FIR, are that the Complainant, namely Zeeshan Abbasi, got registered the Subject FIR with the contention that he is the owner and in possession of land bearing Khasra No.335 situated at Bani Gala Road. On 10.04.2022, when he started construction of a wall on his land, he was informed that the Accused, namely Sagheer and his brother Safeer, sons of Shabbir Ahmed, along with 8 to 10 persons, while armed with **a** 30-bore pistol, sticks, and iron rod, came there and extended threats to his laborers working there. Hence, the Subject FIR was registered.

3. After the registration of the Subject FIR, Challan under Section 173 of the Code of Criminal Procedure, 1898 (**"Cr.P.C."**) was submitted before the learned Trial Court. Thereafter, photocopies were supplied to the Respondents No.1 to 6/Accused, and on 20.09.2022, charge was framed, to which they pleaded not guilty and claimed trial. The case was then fixed for prosecution evidence. On 19.09.2023, learned counsel for the

Accused submitted an application under Section 249-A Cr.P.C., notice of which was given to the Complainant and the prosecution. On 28.11.2023, the learned Trial Court, after hearing arguments of learned counsel for the Accused and learned Assistant District Public Prosecutor (ADPP) for the State, acquitted the Accused of the charges leveled against them by invoking the provision of Section 249-A Cr.P.C. Being aggrieved by the Impugned Order, the Appellant/Complainant has filed the instant Appeal.

4. The learned counsel for the Appellant/Complainant argued that the Impugned Order is unlawful, arbitrary, and contrary to the settled principles of natural justice; that it was passed in an undue haste**,** without affording the Appellant/Complainant a fair opportunity to produce evidence; that the order suffers from inherent legal infirmities, is perverse, shocking, and unsupported by the material on record; that it stands in utter disregard of binding precedents laid down by the superior judiciary; that the order violates the fundamental principle of *"audi alteram partem"*; that sufficient material was available on record against the Respondents No. 1 to 6/Accused, including the statements of four individuals under Section 161 Cr.P.C. endorsing the occurrence, but the learned trial court proceeded to pass the impugned order without recording or evaluating any evidence, rendering it premature and unjustified; that a plain reading of the order sheet reveals that the Appellant/Complainant was never informed about the submission of the report under Section 173 Cr.P.C., nor was any notice served upon him; that no coercive measures were taken against the prosecution witnesses to ensure their presence, hence the exercise of powers under Section 249-A Cr.P.C. is misconceived, unlawful, and contrary to judicial dicta; that the charge was not groundless, nor could it be presumed in the absence of evidence that there was no likelihood of conviction, yet the court passed the order in violation of the settled norms of justice; that the order is based on assumptions and presumptions, leading to a gross miscarriage of justice; and that the impugned order is capricious, illegal, factually flawed, and liable to be set aside as it rests upon conjectures and surmises, rendering it unsustainable in law. Lastly, the learned counsel prayed that the appeal be allowed, the Impugned Order be set aside, and the case be remanded to the Trial Court for decision on merits after proper trial.

5. Conversely, the learned counsel for Respondents No.1 to 6/Accused submitted that there was no reasonable prospect of conviction against the accused; that the learned trial court rightly exercised its jurisdiction in passing the Impugned Order, which is well-reasoned and does not warrant interference by this Court; and that the order is free from any illegality, procedural lapse, or jurisdictional error. Lastly, the learned counsel requested that the instant appeal be dismissed.

6. I have heard the learned counsel for the parties and examined the available record with their able assistance.

7. Admittedly, both the Appellant/Complainant and the Respondents No. 1 to 6/Accused in this case are embroiled in a dispute over the ownership of land, with a civil suit also pending between them before the District Courts of Islamabad, specifically before a Civil Judge-East, Islamabad. The Appellant/Complainant claims that the Respondents No. 1 to 6/Accused interfered with the land, which he owns and possesses, and threatened him with severe consequences to halt the construction on the property. Although Challan was submitted in this case, the Appellant/Complainant failed to appear before the learned Trial Court to substantiate the allegations against the Respondents No. 1 to 6/Accused. Additionally, an injunctive order was passed against the Appellant/Complainant in favor of the Respondents No. 1 to 6/Accused, restraining him from interfering with the same land. The Appellant/Complainant was undoubtedly aware of the F.I.R, but he neglected to follow through with the case, and as a result, the learned Trial Court acquitted the Respondents No. 1 to 6/Accused under Section 249-A Cr.P.C. The acquittal order from a Trial Court carries a double presumption of innocence, which must be rebutted by the prosecution with strong, cogent, and convincing evidence. In this case, the Appellant/Complainant displayed a lack of interest during the trial by failing to appear as a prosecution witness. When the Trial Court acquitted the accused, the Appellant/Complainant challenged the decision before this Court. Once an accused is acquitted, he is presumed innocent, not just until proven guilty, but also reinforced by the acquittal itself. The presumption of innocence is considerably strengthened, and courts are generally hesitant to interfere with acquittal judgments unless there is clear evidence of error or injustice. In *"State Vs. Abdul Khaliq"* **(PLD 2011 Supreme Court 554)**, it was held that "*the scope of interference in an appeal against acquittal is very narrow and limited. The courts should only intervene if the acquittal is shown to be perverse, passed in gross violation of law or suffering from serious misreading or non-reading of evidence."*

8. The prosecution carries the burden of disproving this presumption of innocence, and interference in acquittal judgments is rare, typically requiring glaring errors of law or fact to justify such action. Furthermore, the august Supreme Court has reiterated that the presumption of innocence is doubled in cases of acquittal, and the appellate court should not interfere simply because a different conclusion could be reached upon reappraisal of the evidence. The acquittal should only be overturned if it is found to be arbitrary, capricious, or lacking a reasonable basis in the evidence presented. In summary, the acquittal order indeed carries a double presumption of innocence, and any reversal of this presumption must be supported by cogent and compelling evidence.

9. Similarly, reliance is placed on the recent judgment of the august Supreme Court of Pakistan titled *"Muhammad Riaz Vs. Khurram Shehzad and another"* cited in **(2024 SCMR 51)**, the relevant portion of which is reproduced as under:

> *"12. We are mindful of the phrase that "the accused is the favourite child of law" but it is somewhat enlightening to understand why this axiom was not coined contrariwise to say "the victim is the favourite child of the law". The substratum of this concept is based on the farsightedness and prudence, 'let a hundred guilty be acquitted but one innocent should not be convicted'; or that it is better to run the risk of sparing the guilty than to condemn the innocent. The raison d'être is to assess and scrutinize whether the police and prosecution have performed their tasks accurately and diligently in order to apprehend and expose the actual culprits, or whether they dragged innocent persons in the crime report on account of a defective or botched-up investigation which became a serious cause of concern for the victim who was deprived of justice. The philosophy of the turn of phrase "the accused is the favourite child of law" does not imply that the Court should grant any unwarranted favour, indulgence or preferential treatment to the accused, rather it was coined to maintain a fair-minded and unbiased sense of justice in all circumstances, as a safety gauge or safety contrivance to ensure an evenhanded right of defence with a fair trial for compliance with the due process of law, which is an integral limb of the safe administration of criminal justice and is crucial in order to avoid erroneous verdicts, and to advocate for the reinforcement of the renowned doctrine "innocent until proven guilty"."*

10. No recovery has been made in this case. The Appellant/Complainant nominated two individuals, namely Sagheer and Safeer, both sons of Shabbir Ahmed, and later added four more persons in his supplementary statement. The Appellant/Complainant is not an eyewitness to the event; rather, according to the Subject F.I.R.**,** laborers were working on the construction of the boundary wall over the disputed land and informed him of the alleged incident. Furthermore, a Civil Suit is pending between the parties, and *malafides* cannot be ruled out. Therefore, in these circumstances, this court believes that the Appellant/Complainant has failed to identify any error or injustice in the Impugned Order of acquittal. Consequently, the instant Criminal Appeal being devoid of any merits is **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

//Sajid//*