JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.23 of 2025

Nadeem Ahmed
Vs.
The State and others

Appellant by:	Ch. Sajid Abdullah Sraa and Mr. Ehsan Ullah Sial, Advocates.
Respondent No.1/State by:	Rana Ali Raza, SPP along with Muhammad Zaman, ASI.
Respondents No.2 & 3 by:	Syed Abaid Ullah Shah, Advocate.
Date of Hearing:	**23.04.2025.**

INAAM AMEEN MINHAS, J.- This appeal has been preferred against the order dated 23.12.2024 **("Impugned Order")**, passed by the learned Judicial Magistrate Section-30, West-Islamabad **("Trial Court")**, whereby application u/s 249-A Cr.P.C filed by respondents No.2 & 3 was accepted and they were acquitted from case FIR No.910, dated 06.07.2022, under section 406 PPC, registered at Police Station Golra, Islamabad.

2. The facts, in brief, as per contents of the FIR are that the appellant moved an application to the police alleging therein that he has a sanitary shop and he made partnership with respondent No.3/Zahid Maqsood regarding the business and handed over huge amount to him. Later on a business dispute arose and rendition of accounts took place, whereby respondent No.3 had to pay Rs.700,000/-, therefore, an agreement was executed between the parties on 16.06.2021 and as per

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clause 7 of the agreement, respondent No.3 was bound to pay amount of Rs.700,000/- within a period of 07 months but he paid only Rs.15000/- through bank account and thereafter delayed the payment and now refused to pay the amount and in this delay of payment, his father Maqsood Ahmed/respondent No.2 was also included. The police investigated the matter, submitted challan and the learned Trial Court framed the charge. During trial respondents No. 2 and 3 filed an application under section 249-A, Cr.P.C for their acquittal from the case, which was accepted through the Impugned Order and respondents No.2 & 3 were acquitted from the case, hence, the present appeal.

3. The learned counsel for the appellant contended that the Impugned Order is illegal and against the law and facts of the case; that the Impugned Order was passed in haste; that sufficient material was available on record against respondents No. 2 & 3 and that the appellant was not provided opportunity to produce his evidence, hence, the Impugned Order is liable to be set aside.

4. The learned counsel for respondents No.2 & 3 has vehemently opposed the instant appeal and contended that the Impugned Order has been passed in accordance with law, therefore, the instant appeal may be dismissed.

5. I have heard the arguments and perused the record.

6. From the contents of the FIR it is apparent that the appellant gave the money to respondent No.3 for a business purpose. Later on a dispute arose between the parties, rendition of accounts took place and finally an agreement was executed between the parties on 16.06.2021,

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whereby respondent No.3 agreed to pay Rs.700,000/- to the appellant but respondent No.3 paid only Rs.15000/- through bank account and refused to pay the remaining amount.

7. In the instant matter the fundamental ingredients of section 405, PPC are missing i.e. (i) entrustment of the amount and (ii) misappropriation as there is no allegation of entrustment of any amount to respondent No.3 by the appellant rather the appellant himself admitted the existence of a relationship of business. Moreover, there is no clause in the agreement, which could show that the amount was given to respondent No.3 as entrustment.

8. In the presence of the agreement and the rendition of the accounts, it is established that it was a civil dispute between the parties rather than criminal liability. Additionally, this is only a case of breach of agreement rather than breach of trust for which a remedy lies with Civil Court.

9. Under section 249-A, Cr.P.C the learned Trial Court is empowered to acquit an accused at any stage, even without a formal application, if it becomes clear that the charge is groundless and there is no chance of conviction even after the evidence is recorded. The law allows the Trial Court to use this power at any stage of the case, whether early on, in the middle or even toward the end of the trial. The Honourable Supreme Court in ***Ammad Yosaf vs. The State and another***, **(PLD 2024 SC 273)** and ***Chairman Agricultural Development Bank of Pakistan & another vs. Mumtaz Khan,*** **(PLD 2010 SC 665)** affirmed that Trial Court can act on its own (suo motu) to

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end a case, if the conditions for acquittal u/s 249-A, Cr.P.C. are met and that filing a formal application is not mandatory in every case.

10. While using powers u/s 249-A, Cr.P.C (or u/s 265-K, Cr.P.C in Sessions trials), the Trial Court must follow the basic requirements and provide an opportunity as well as consider the explanation given by the defence and go through the evidence available on record and in the present case the defence as well as prosecution was provided full and fair opportunity to present their case and the Trial Court has no additional restrictions imposed by law on using this authority. The purpose and main aim of section 249-A, Cr.P.C is to avoid unnecessary delay and the hardship of a lengthy trial when it is already apparent that the accused cannot be convicted.

11. In light of the above discussion, the Impugned Order has been passed in accordance with law. The instant appeal bears no merits, therefore, **dismissed** and the Impugned Order is **upheld.**

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 09.05.2025

JUDGE

R.Anjam

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