

P L D 1992 Peshawar 71

Before Mian Muhammad Ajmal, J

Mst. SAID KHANUM --- Appellant

versus

MUNSIF KHAN and 7 others---Respondents

Criminal Appeal No.52 of 1991, decided on 9th February, 1992.

(a) Criminal Procedure Code (V of 1898)--

---S. 249-A---Applicability of S.249-A, Cr.P.C.---Acquittal--Essentials--Requirements of S.249-A, Cr.P.C. are that the Court after hearing the prosecutor and the accused, if considers that the charge is groundless or there is no probability of the-accused being convicted of any offence, may acquit the accused.

(b) Penal Code (XLV of 1860)--

---S.427/34---Criminal Procedure Code (V of 1898), Ss.417(2) & 249-A--Counsel for the parties in the private complaint had undoubtedly been heard, but in the light of the report of the Investigating Officer a prima facie case against accused was made out and apparently the charge did not seem to be groundless---Trial Court had acted in haste in acquitting the accused under 5.249-A, Cr.P.C: at the very initial stage without affording the complainant any opportunity to prove her allegations against accused---Order of acquittal was consequently set aside and the case was remanded back to Trial Court for deciding the matter after recording evidence in accordance with law.

Khalid Rehman Qureshi for Appellant.

Khan Afsar Khan for Respondents.

Mohammad Aslam Khan, A. A.-G for the State.

Dates of hearing: 1st and 9th February, 1992.

JUDGMENT

The appellant herein, has impugned the order of EAC-III, Haripur dated 5-11-1991 whereby he acquitted the respondents under section 249-A, Cr.P.C.

2. The appellant filed a complaint under section 427/34, P.P.C. against the respondents in the Court of EAC-111 Haripur that the complainant is a cosharer in the property alongwith the respondents, that the respondents without the permission and consent of the complainant have

been cutting the trees and disposing them of and thereby have caused her loss to the extent of Rupees 9/10 thousands. This complaint was referred to the police under section 202, Cr.P.C. for inquiry. The police after examining certain witnesses reported that the contents of the complaint were based on facts and it was recommended that the case requires proper adjudication by the Court. The learned Court below in spite of this report disposed of the case under section 249-A, Cr.P.C. summarily.

3. The learned counsel for the appellant contended that the Trial Court has acted in haste by not recording the evidence and without application of mind to the facts of the case he acquitted the accused-respondents which was unwarranted by law and against the requirements of section 249-A, Cr.P.C. The complainant had a good prima facie case and it did fall within the ambit of section 427/34, P.P.C. as such the learned Court was legally bound to have recorded the evidence of the parties and then in view thereof decided the matter.

4. The learned counsel for the respondents submitted that primarily the case was of civil nature and if the complainant was aggrieved by the cutting of the trees by the respondents, she could approach the Civil Court for her redress.

5. The learned counsel for the State, however, did not support the impugned order.

6. I have given due consideration to the submissions of the learned counsel for the parties and have gone through the record of the case.

7. After the complaint having been entertained by the Court and referred to the SHO concerned under section 202, Cr.P.C. for, inquiry and report, the learned Court after the receipt thereof should have proceeded to decide the matter on merits. From the perusal of the record it is evident that the Trial Court after the receipt of report from the police took cognizance and issued process. The parties in compliance attended the Court but the learned Court in his own wisdom acquitted the respondents under section 249-A, Cr.P.C. Section 249-A, Cr.P.C. would be relevant to be re-produced hereunder:

"249-A, Cr.P.C. Nothing in. this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence.

The requirements of section 249-A, Cr.P.C. are that the Court after hearing the prosecutor and the accused, if considers that the charge is groundless or there is no probability of the accused being convicted of any offence, may acquit the accused. From the perusal of the impugned order it is obvious that though it was a private complaint and the counsel for the parties were heard but in the light of the report of the Investigating Officer there was a prima facie case against the accused-respondents and apparently the charge does not seem to be groundless. The learned Court has acted in haste in disposing of the matter in its very initial stage without affording the complainant any opportunity to prove her allegations against the respondents. This appeal is, therefore, accepted, the impugned order is set aside and the case is remanded back to the trial Court to decide the matter after recording the evidence in accordance with law.

N.H.Q./1340/P

Case remanded.