

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,**

*(Judicial Department)*

**Cr.R No. 62-P/2022**

*1 Yasir khan son of Saadat Khan,  
2. Mudassar Khan son of Saadat Khan, residents of Umeed Abad  
No.2 District, Peshawar.*

*(Petitioners)*

*Versus*

*1) The State through Advocate General Khyber Pakhtunkhwa,  
Peshawar.  
2) Mst.Kainat D/O Nasar Ullah Khan, r/o Swati Pattak District,  
Peshawar.*

*(Respondents)*

**Present:**

*Mr. Syed Abdul Fayaz, Advocate for thePetitioners.*

*Mr.Malak Akhtar Hussain, AAG, for State.*

*Mr. Arif Ullah, Advocate for the respondents.*

Date of hearing: **18.07.2022**

**JUDGMENT**

**ISHTIAQ IBRAHIM, J.-** Through the instant Criminal Revision, the petitioners have challenged the order dated 03.03.2022 rendered by learned Addl: Sessions Judge-XII, Peshawar, whereby the application of the petitioners for their acquittal u/s 265-K Cr.P.C, on the basis of compromise was turned down.

**2.** Shorts facts of the case are that respondent Mst.Kainat d/o Nasar Ullah Khan charged the petitioners in case FIR No.482 dated 12.04.2018 under section 506 PPC r/w section  $\frac{3}{4}$

Ghag Act/ 25 Tel Act registered at Police Station, Pishtakhara.

3. The petitioners applied to the competent court for their interim pre-arrest bail which was accordingly granted to them and latter on the pre-arrest bail of the petitioners was confirmed vide order dated 23.05.2018 passed by learned Addl: Sessions Judge-XI, Peshawar on the basis of compromise effected between the parties. Thereafter, complete challan was put in Court for trial against the petitioners and during pendency of the trial, the petitioners submitted an application for their acquittal u/s 265-K Cr.P.C The learned trial Court after hearing arguments of learned counsel for the parties, rejected the application. Hence, this Criminal Revision petition.

4. Learned counsel for the petitioners, contended that a genuine compromise was effected between the parties during bail stage with their sweet will and without any duress and coercion and to this effect a compromise deed was produced before the court and statement of the complainant was recorded on the basis of which the petitioners' pre-arrest bail was confirmed. He further contended that it is a settled principle of law and it has also

been held by the superior court that once compromise is always compromise and the learned trial court failed to apply his judicial mind to the above mentioned facts and passed the impugned order. He requested that the impugned order of learned Addl: Sessions Judge-XII, Peshawar may be set aside and the petitioners may be acquitted from the charges on the basis of compromise.

5. Learned counsel for the respondents opposed the arguments of learned counsel for the petitioners and contended that compromise effected at bail stage cannot be considered during trial of the petitioners/accused.

6. Arguments heard and record perused.


7. The question as to whether compromise effected at bail stage can be considered for acquittal of accused at trial or otherwise, is the main controversy involved in this case which needs to be addressed by this Court. While deciding the case titled "Syed Iftikhar Hussain Shah Vs. Syed Sabir Hussain Shah and 2 others" (1998 SCMR 466) the august Supreme Court refused leave to appeal against the judgment of High Court whereby the trial Court had been directed to acquit the accused on the basis of compromise arrived at between the parties

at the time of pre-arrest bail. Observations of the Hon'ble apex Court in the above referred judgment are reproduced below.

**“It may be true that while accepting revision application, the learned Judge in Chambers should have directed the learned Sessions Judge to dispose of the case in accordance with law but it is submitted before us that the learned Sessions Judge has already acquitted the accused in the case which has not been challenged by the petitioner. Be that as it may, after reading the statement of the petitioner recorded by the learned Additional Sessions Judge while disposing of the pre-arrest bail application of respondents, we are in no doubt that a sum of Rs.4,000/- was received by the petitioner as compensation for settlement of the case as as such it is not a fit case in which leave should be granted. The order of the learned Judge in chamber is a just and proper order in the circumstances of the case and no case is made out for interference with this order. Petition is, accordingly, dismissed and leave to appeal is refused”.**

The principle underlying in the above observations of the Hon'ble apex Court, so far this Court gathers, is that once compromise effected at bail stage can be considered for acquittal of accused during trial.

This view was distinguished by the apex Court in a subsequent judgment in the case of "Muhammad Akram Vs. Abdul Wahab and 03 others" (2005 SCMR 1342) wherein leave to appeal was refused against the order of Lahore High Court Multan Bench. It would be appropriate to reproduce the observations of High Court which were confirmed by the Hon'ble apex Court.



**"(3) I have heard the learned counsel for the petitioner at length, also have gone through the impugned order as also the contents of this petition. Under subsection (2) of section 345, Cr.P.C. the offences mentioned in the first two columns given in the said section may, with the permission of the Court before whom any prosecution for such offence is pending, be compounded by the persons mentioned in the third column given thereunder. It is an admitted position that compromises were effected during the pendency of petition for bail before arrest, when the prosecution of the offences was not pending before the learned trial Court. Such a compromise cannot be made basis for acquittal of the petitioner as under section 345(2), Cr.P.C. it is the trial Court which has to satisfy itself and grant permission to compound the offence being tried by it. I find no illegality or jurisdictional error in the impugned orders and maintain the same. The case-law cited by the learned counsel for the petitioner is not applicable to the facts and circumstances of this case."**

The august Supreme Court in the case of Muhammad Akram *supra* while deciding the CPLA against the above order of the Lahore High Court, observed that:

**“5. We have considered the contentions of the learned counsel for the petitioner and carefully scanned the record available. Admittedly the petitioner was granted bail solely on the ground that the complainant party including injured filed affidavits in favour of the petitioner; that he may be released on bail. Subsequently, after completion of the investigation, police submitted charge-sheet against him before the trial Court where the case is pending for trial. The trial Court and the learned High Court rightly rejected the application of the petitioner”.**

According to the principle laid down in the above referred judgment, compromise effected at bail stage cannot be considered during trial of the accused.

8. In a recent judgment rendered by the august Supreme Court in the case titled “Tariq Mehmood Vs. Naseer Ahmad and others” (PLD 2016 Supreme Court 347), two categories of cases mentioned in sub-section (1) and sub-section (2) of section 345, Cr.P.C were discussed and it was held that compromise effected in the cases categorized under sub-section (1) of Section 345, Cr.P.C take

effect from the moment it is effected by the parties and none of them can resile from it at subsequent stage of the case while compromise at bail stage in the cases falling under sub-section (2) of section 345, Cr.P.C could not be taken effect to at the stage of trial if the complainant party resiles from the compromise. The principles laid down by the apex Court in this regard are as under:-

**“Subsection (1) of Section 345, Cr.P.C enlists the offences which may be compounded by the specified persons without any intervention of any Court and in some of the above mentioned precedent cases it had been clarified that compounding in such cases takes effect from the moment the compromise is completely entered into by the parties, the relevant Court which is to try the offence in issue is left with no jurisdiction to refuse to give effect to such a compromise and a party to such a compromise cannot resile from the compromise at any subsequent stage of the case. On the other hand subsection (2) of section 345, Cr.P.C deals with cases in which the offences specified therein can be compounded only with the permission of the Court and in all such cases any compromise arrived at between the parties on their own at any stage is not to take effect at all unless the Court permits such compromise to be given effect to and the relevant Court for the purpose is the Court before which prosecution for the relevant offence is pending”.**

9. In the present case the petitioners are charged under Section 506 PPC r/w section 3/4 Ghag Act/25 Tel Act. Sections 3/4 Ghag Act / 25 Tel Act are not compoundable while section 506 PPC though compoundable but cannot be compounded without intervention of the trial Court. The compromise in this case was arrived at between the parties before the Court which was seized of the pre-arrest bail of the accused/petitioners and was undoubtedly not the trial Court. For convenience section 345(1) is reproduced as under:-

**345. Compounding of offences. (1) The offences punishable under the sections of the Pakistan Penal Code (XLV of 1860) [specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:-**

10. From the bare reading of above provision of law, it is clear that offences mentioned in the table which is part of this sub section can be compounded at any stage and the compromise shall be effective for subsequent proceedings. Section 345 (2) Cr.P.C provides mechanism for the compounding of offences but with the permission of the trial Court.



For convenience section 345 (2) Cr.P.C is reproduced as under:

**(2) [Subject to sub-section (7), the offences punishable under the sections of the Pakistan Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table:-** In case of **Tariq Mehmood Vs Naseer Ahmad and others** Supra the Hon'ble Apex Court has already laid to rest this question and in unequivocal terms has held that offences coming under the purview of section 345 (1) Cr.P.C if once compounded then that compromise for all practical purposes shall be considered in the subsequent proceedings. While the offences mentioned in section 345(2) Cr.P.C can only be compounded with the permission of the trial court, therefore, a full fledged mechanism has been laid down in section 345 of the Cr.P.C for the composition of the offences, submission of the learned counsel that in all cases once compromise is effected, the same shall be considered for the acquittal of the accused during subsequent proceedings is misconceived being

against the mandate of law as well as the dictum laid down by the Hon'ble Apex Court in the above referred judgments.

11. In the present case as already observed two of the sections are non-compoundable while section 506 PPC as per table which is part of 345 (1) Cr.P.C is compoundable only when the offence is not punishable with imprisonment for seven years, in other words when the offence under section 506 PPC comes under the part-1 of the ibid section than the provision of section 345(1) Cr.P.C will come into play, otherwise if it is covered by para-2 of section 506 PPC then permission of the trial court is necessary and without permission of the trial court, compromise at bail stage shall not be considered in the subsequent proceedings. Furthermore, perusal of compromise deed as well as statement of the complainant recorded before the learned trial would reveal that the complainant had compromised the matter with the petitioners only to the extent of confirmation of pre-arrest bail of the petitioners and there is no mention with regard to the acquittal of the petitioners at trial stage.

12. In light of the above discussion, this Court arrives at the conclusion that

petitioners/accused cannot be acquitted on the basis of compromise effected by the complainant at bail stage in view of the principles laid down in the ibid judgment of the august Supreme Court lastly mentioned as the compromise had been effected at bail stage which was not effective at the stage of trial. The impugned order is not suffering from any illegality or irregularity which does not warrant interference by this court. Resultantly, this Criminal Revision is dismissed.

Announced.  
18.07.2022

SB Hon'ble Mr. Justice Ishtiaq Ibrahim  
(Asif Jan SSS)



JUDGE