P L D 2016 Supreme Court 347

Present: Asif Saeed Khan Khosa, Mushir Alam and Sardar Tariq Masood, JJ

TARIQ MEHMOOD---Appellant

Versus

NASEER AHMED and others---Respondents

Criminal Appeal No.135 of 2013, decided on 26th January, 2016.
(Against the judgment dated 9-3-2007 passed by the Peshawar High Court, Abbottabad Bench in Criminal Revision No.27 of 2006)

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

----S. 345(1) & (2)---Compounding of offence with and without permission of court---Principles---Section 345(1), Cr.P.C. enlisted the offences which may be compounded by the specified persons without intervention of any court---Compounding in such cases took effect from the moment the compromise was completely entered into by the parties, the relevant court which was to try the offence in issue was left with no jurisdiction to refuse to give effect to such a compromise and a party to such a compromise could not resile from the compromise at any subsequent stage of the case---On the other hand S.345(2), Cr.P.C. dealt with cases in which the offences specified therein could 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 was not to take effect at all unless the court permitted such compromise to be given effect to and the relevant court for the purpose was the court before which prosecution for the relevant offence was pending.

Rana Awais and others v. S.H.O. Police Station People's Colony, Faisalabad and others 2001 PCr.LJ 241; Naurang Rai v. Kidar Nath and another (29 Cr.LJ 1928), In re M.S. Ponnuswamy Ayyar (AIR 1937 Mad. 825), Thunki w/o Deoman and another v. Bajirao Sitaram Dhoke AIR 1956 Nag. 161; State of U.P. v. Nanhey AIR 1968 Allahabad 394 and Muhammad Akram v. Abdul Waheed and 3 others 2005 SCMR 1342 ref.

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

----Ss. 345(2), (6), (7) & 498---Penal Code (XLV of 1860), S.302(b)---Qatl-i-amd---Compromise without permission of court---Scope---Offence falling with in the ambit of S.345(2), Cr.P.C.---Compounding of such offence at the stage of bail could not be given effect to at the stage of trial when at the stage of trial the compounding had been resiled from by legal heirs of the deceased---Neither the legal heirs of the deceased nor the Commission appointed by court appeared before Trial Court in support of the compromise, thus, no verified, valid or subsisting compromise existed before the Trial Court during the stage of trial for according the requisite permission to compound the offence in terms of the requirements of S.345(2), Cr.P.C.

Accused was granted ad interim pre-arrest bail by Trial Court. During the pendency of his pre-arrest bail application a compromise deed was executed between the legal heirs and accused wherein it had been stated that the heirs of deceased had no objection to confirmation of the accused's ad interim pre-arrest bail or to his acquittal in the main case. Trial Court appointed a Commission for recording of statements of the heirs of deceased for confirming the factum of compromise between the parties. Commission recorded a joint statement of the heirs of deceased and in that statement the heirs of the deceased maintained that they had no objection to confirmation of the appellant's ad interim pre-arrest bail or to his acquittal. Accused's ad interim pre-arrest bail was confirmed by the Trial Court. Upon completion of the investigation of the case a challan against accused was submitted before the Court of Session for trial. Application was submitted by the accused under section 345(6), Cr.P.C. seeking his acquittal in the case on the basis of the compromise already entered into by the parties at the stage of bail but the Sessions Judge, dismissed the said application because by that time the heirs of the deceased had resiled from the compromise.

Issue in the present case was whether or not compounding of a criminal offence at the stage of bail could still be given effect to at the stage of trial when at the stage of trial the compounding had been resiled from by one of the parties.

Offence involved in the present case was that under section 302, P.P.C. which fell squarely within the ambit of section 345(2), Cr.P.C. and, therefore a compromise arrived at between the parties at the stage of bail when even the Challan had not been submitted before trial Court, could not validly have been accepted as a compromise and the trial court could not have accepted any such compromise when before the trial court the heirs of the deceased were not willing to abide by the earlier agreement entered into by them with the accused. Apart from that there was no verification of the list of heirs of the deceased available before the trial court, the heirs of the deceased had not appeared before the trial court for getting their statements recorded in support of the compromise, the Commission before whom the heirs of the deceased had acknowledged the factum of compromise had not appeared before the trial court and, thus, there was no verified, valid or subsisting compromise before the trial court for according the requisite permission to compound the offence in terms of the requirements of section 345(2), Cr.P.C. If the requirements of section 345(2), Cr.P.C. did not stand fulfilled then, as expressly forbidden by section 345(7), Cr.P.C., the trial court could not have accepted the application filed by the accused for his acquittal on the basis of the claimed compromise. Appeal was dismissed accordingly.

Muhammad Akram v. Abdul Waheed and 3 others 2005 SCMR 1342 ref.

Syed Iftikhar Hussain Shah v. Syed Sabir Hussain Shah and others 1998 SCMR 466; Manzoor Ahmed and another v. The State and 2 others PLD 2003 Lah. 739 and Mst. Maqsooda Bibi v. Amar Javed and others 2002 PCr.LJ 713 no more holding the field.

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

----S. 345(2)---Penal Code (XLV of 1860), Ss. 304, 309 & 310---Waiver (afw) of right of qisas in Qatl-i-amd---Compounding of qisas (sulh) in Qatl-i-amd---Principles---Whether compounding of offence under S.345(2), Cr.P.C, related to compounding under S.310, P.P.C and not to waiver under S.309, P.P.C.---Provisions of Ss.309 & 310, P.P.C. were relevant only to cases of Qisas and not to cases of Ta'zir and a case was to be a case of Qisas only where the provisions of S.304, P.P.C. stood attracted, i.e. where the accused person confessed his guilt before the Trial Court or where Tazkiya-tul-shahood of the witnesses was conducted by the Trial Court before trial of the accused person as required by Art.17 of the Qanun-e-Shahadat, 1984---Both such steps required to make a case one of Qisas were relevant to a Trial Court and, thus, even waiver or compounding provided for in Ss.309 & 310 were relevant to a Trial Court and not to any stage before the case reached the Trial Court.

Zahid Rehman v. The State PLD 2015 SC 77 ref.

Mushtaq Ali Tahirkheli, Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Appellant.

Nemo for Respondent No.1.

Mian Arshad Jan, Additional Prosecutor-General, Khyber Pakhtunkhwa for the State.

Date of hearing: 26th January, 2016.

JUDGMENT

ASIF SAEED KHAN KHOSA, J.---The issue in this case is whether or not compounding of a criminal offence at the stage of bail can still be given effect to at the stage of trial when at the stage of trial the compounding has been resiled from by one of the parties. We have found that the precedent cases on the subject available thus far have not stated the legal position in this respect quite clearly and, therefore, we have decided to make an effort to remove all ambiguities confounding the issue and to state the correct legal position as lucidly as we can.

2. The necessary facts giving rise to the present appeal are that Tariq Mehmood appellant is an accused person in case FIR No. 105 registered at Police Station Narra, District Abbottabad on 25.08.2005 for an offence under section 302, P.P.C. in respect of an alleged murder of one Safeer Ahmed. The said FIR had been lodged by Naseer Ahmed complainant who is a brother of Safeer Ahmed deceased. Apprehending his arrest in connection with this case the appellant applied for pre-arrest bail before the learned Sessions Judge, Abbottabad on 03.09.2005 and the appellant's application was marked to the learned Additional Sessions Judge-II, Abbottabad who admitted the appellant to ad-interim pre-arrest bail. During the pendency of that application a compromise deed was executed on 12.09.2005 and the same was signed by Naseer Ahmed complainant and a respectable person of the area wherein it had been stated that the heirs of Safeer Ahmed deceased had no objection to confirmation of the appellant's ad-interim pre-arrest bail or to his acquittal in the main case. On the basis of

the said compromise deed an application was filed by Naseer Ahmed complainant before the learned Additional Sessions Judge-II, Abbottabad on 28.10.2005 requesting for recording of statements of the heirs of Safeer Ahmed deceased through a Commission for confirming the factum of compromise between the parties and on the same date the said application was allowed by the learned Additional Sessions Judge-II, Abbottabad and a local Advocate was appointed as the Commission. On 29.10.2005 the Commission recorded a joint statement of the heirs of Safeer Ahmed deceased and in that statement the heirs of the deceased maintained that they had no objection to confirmation of the appellant's ad-interim pre-arrest bail or to his acquittal. On 31.10.2005 the Commission submitted a report before the learned Additional Sessions Judge-II, Abbottabad and on 12.11.2005 the Commissioner got his statement recorded before the said court confirming that the heirs of the deceased had no objection to confirmation of the appellant's ad-interim pre-arrest bail but the Commissioner said nothing in that statement regarding the heirs of Safeer Ahmed deceased having no objection to the appellant's acquittal in the main case. On the same day, i.e. on 12.11.2005 the appellant's ad-interim pre-arrest bail was confirmed by the learned Additional Sessions Judge-II, Abbottabad. Upon completion of the investigation of this case a Challan (report under section 173, Cr.P.C.) was submitted before the Court of Session, Abbottabad on 20.11.2005 and the learned Sessions Judge, Abbottabad kept the case to his own court for trial. On 28.02.2006 an application was submitted by the appellant under section 345(6), Cr.P.C. seeking his acquittal in this case on the basis of the compromise already entered into by the parties at the stage of bail but on 30.08.2006 the learned Sessions Judge, Abbottabad dismissed the said application of the appellant because by that time the heirs of the deceased had resiled from the compromise. The appellant filed Criminal Revision No.27 of 2006 before the Peshawar High Court, Abbottabad Bench against the said order passed by the learned Sessions Judge, Abbottabad but the appellant's revision petition was dismissed by a learned Judge-in-Chamber of the Peshawar High Court, Abbottabad Bench on 09.03.2007. Thereafter the appellant filed Criminal Petition No.123 of 2007 before this Court wherein leave to appeal was granted on 03.07.2013. Hence, the present appeal before this Court.

3. In support of this appeal the learned counsel for the appellant has submitted that it had never been disputed by any party that at the stage of confirmation of the appellant's ad-interim pre-arrest bail by the learned Additional Sessions Judge-II, Abbottabad the heirs of Safeer Ahmed deceased had entered into a compromise with the appellant and that they had stated before the Commissioner that they had no objection to confirmation of the ad-interim pre-arrest bail of the appellant besides having no objection to his acquittal. According to the learned counsel for the appellant once a genuine compromise had been entered into by the heirs of the deceased with the appellant and such compromise had also partly been acted upon then the heirs of the deceased could not thereafter be permitted to resile from the same and such compromise enured to the benefit of the appellant even during the trial before the trial court for the purpose of seeking acquittal. He has maintained that if the application of the appellant for pre-arrest bail had been decided by the learned Additional Sessions Judge-II, Abbottabad then the learned Sessions Judge, Abbottabad should not have kept the case of the appellant to his own court for trial and the trial of the appellant should also have been marked by the learned Sessions Judge, Abbottabad to the

learned Additional Sessions Judge-II, Abbottabad so that the earlier compromise arrived at between the parties could have been given effect to by the learned Additional Sessions Judge-II, Abbottabad even during the trial. The learned counsel for the appellant has pointed out that in the case of Syed Iftikhar Hussain Shah v. Syed Sabir Hussain Shah and others (1998 SCMR 466) a 2-member Bench of this Court had declared that a compromise in a criminal case entered into at the stage of bail is to enure to the benefit of the accused person even at the stage of trial but later on in the case of Muhammad Akram v. Abdul Waheed and 3 others (2005 SCMR 1342) another 2-member Bench of this Court had taken a different view of the matter and had declared that a compromise entered into between the parties to a criminal case at the stage of bail is to have no value at the stage of trial and it is only that compromise which has been entered into or is validly subsisting during the pendency of the trial which can be accepted by a trial court for the purposes of recording acquittal of an accused person. The learned counsel for the appellant has maintained that in the later case of Muhammad Akram the earlier case of Syed Iftikhar Hussain Shah had not even been referred to by this Court and, thus, the judgment passed in the case of Muhammad Akram can only be treated as per incuriam. As against that the learned Additional Prosecutor-General, Khyber Pakhtunkhwa appearing for the State has maintained that the case of Muhammad Akram decided subsequently by this Court had proceeded on the correct legal lines and the same had been followed by the Peshawar High Court, Abbottabad Bench in the case in hand and, thus, there is hardly any occasion for this Court to set aside the impugned judgment passed by the High Court.

4. After hearing the learned counsel for the parties, going through the record of the case and attending to the precedent cases available on the subject we have observed that the matter of resiling from a compromise in a criminal case has been a subject of some controversy in different cases decided by different courts in the Indo-Pak sub-continent and we have also noticed that the actual reasons generating such controversy had never been clearly discussed or spelt out in such cases. In the cases of Kumarasami Chetty v. Kuppusami Chetty and others (AIR 1919 Madras 879(2)), Ram Richpal v. Mata Din and another AIR 1925 Lahore 159), Jhangtoo Barai and another v. Emperor (AIR 1930 Allahabad 409), Dharichhan Singh and others v. Emperor (AIR 1939 Patna 141), Mt. Rambai w/o Bahadursingh v. Mt. Chandra Kumari Devi (AIR 1940 Nagpur 181), Godfrey Meeus v. Simon Dular (AIR (37) 1950 Nagpur 91), Prithvi Bhagat and another v. Birju Sada (AIR 1962 Patna 316), Syed Sabir Hussain Shah and another v. Syed Iftikhar Hussain Shah and another (1995 MLD 563), Nabi Bakhsh and others v. Rehman Ali and others (PLJ 1999 Cr.C. (Lahore) 721), Barish Ali and 2 others v. Chaudhry Mushtaq Ahmed, Additional Sessions Judge Depalpur District Okara and 6 others (PLJ 2002 Cr.C. (Lahore) 1009), Mst. Maqsooda Bibi v. Amar Javed and others 2002 YLR 713 and Manzoor Ahmed and another v. The State and others (PLD 2003 Lahore 739), it had been held by different High Courts that a compromise between the parties to a criminal case, duly entered into and acted upon, cannot be allowed to be resiled from by any party and the stage at which such compromise had been entered into is immaterial. In some of the said cases a compromise entered into even at the stages of investigation or bail was not allowed to be resiled from at the stage of trial. We have carefully gone through the judgments rendered in the said precedent cases and have noticed that in the said judgments it had never been clearly mentioned or spelt out that the provisions of section 345, Cr.P.C. governing the matter of compounding of

offences have two distinct parts and they pertain to cases which can be compounded without the permission of a court and cases in which compounding of the offence can be brought about only with the permission of a court. It may be advantageous to reproduce the relevant portions of section 345, Cr.P.C. for facility of understanding:

> **345. Compounding offences.** (1) The offences punishable under the sections of the Pakistan Penal Code 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:-
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> (2) 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:-
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> (2-A) Where an offence under Chapter XVI of the Pakistan Penal Code, 1860 (Act XLV of 1860), has been committed in the name or on the pretext of karo kari, siyah kari or similar other customs or practices, such offence may be waived or compounded subject to such conditions as the Court may deem fit to impose with the consent of the parties having regard to the facts and circumstances of the case.
> (3) When any offence is compoundable under this section, the abetment of such offence or any attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.
> (4) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may with the permission of the Court compound such offence.
> (5) When the accused has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard.
> (5-A) A High Court acting in the exercise of its power of revision under section 439 and a Court of Session so acting under section 439-A, may allow any person to compound any offence which he is competent to compound under this section.
> (6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.
> (7) No offence shall be compounded except as provided by this section.

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. Subsection (5) of section 345, Cr.P.C. goes on to provide that when an accused person has been convicted and an appeal is pending no composition of the offence can be allowed without leave of the court before which the appeal is to be heard and subsection (5-A) of section 345, Cr.P.C. provides for a court of revisional jurisdiction to allow a person to compound any offence which he is competent to compound under section 345, Cr.P.C. Subsection (7) of section 345, Cr.P.C. categorically declares that no offence can be compounded except as provided by section 345, Cr.P.C. It is in this context that the Lahore High Court, Lahore had declared in the case of Rana Awais and others v. S.H.O., Police Station People's Colony, Faisalabad and others (2001 PCr.LJ 241) that in a case falling in the category of cases specified in subsection (2) of section 345, Cr.P.C. any private composition of an offence by the parties has no legal value as in such cases the offence can only be compounded with the permission of the court before which prosecution for the relevant offence is pending. A similar view had earlier on been taken in the cases of Naurang Rai v. Kidar Nath and another (29 Cr.LJ 1928), In re M.S. Ponnuswamy Ayyar (AIR 1937 Madras 825), Thunki w/o Deoman and another v. Bajirao Sitaram Dhoke (AIR 1956 Nagpur 161) and State of U.P. v. Nanhey (AIR 1968 Allahabad 394). This was also the view clearly taken and expressed by this Court in the case of Muhammad Akram v. Abdul Waheed and 3 others (2005 SCMR 1342). It had been observed by this Court in that case as follows:

> "4. We have heard the learned counsel for the petitioner who, inter alia, contended that the Court below had not considered the case in its proper perspective and that the affidavits filed by the P.Ws. as well as the injured to this effect have not been considered; that the compromise once effected is binding on the parties and the petitioner is entitled to acquittal under section 249-A, C.P.C.
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> 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.
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> 6. The impugned judgment is well-reasoned and is entirely in accordance with the law, which does not call for any interference by this Court. However, for ready reference the relevant paragraph of the impugned judgment is reproduced below:---
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> "(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."

7. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that the petition is without merit and substance, which is hereby dismissed and leave declined."

5. In the present case the offence involved is that under section 302, P.P.C. which falls squarely within the ambit of sub-section (2) of section 345, Cr.P.C. and, therefore, a compromise arrived at between the parties at the stage of bail, when even the Challan had not been submitted before the trial court, could not validly have been accepted as a compromise and the trial court could not have accepted any such compromise when before the trial court the heirs of the deceased were not willing to abide by the earlier agreement entered into by them with the present appellant. Apart from that there was no verification of the list of heirs of the deceased available before the trial court, the heirs of the deceased had not appeared before the trial court for getting their statements recorded in support of the compromise, the Commissioner before whom the heirs of the deceased had acknowledged the factum of compromise had not appeared before the trial court and, thus, there was no verified, valid or subsisting compromise before the trial court for according the requisite permission to compound the offence in terms of the requirements of subsection (2) of section 345, Cr.P.C. If the requirements of subsection (2) of section 345, Cr.P.C. did not stand fulfilled then, as expressly forbidden by subsection (7) of section 345, Cr.P.C., the trial court could not have accepted the application filed by the appellant for his acquittal on the basis of the claimed compromise. In this view of the matter the impugned judgment passed by the High Court in the present case has been found by us to be unexceptionable and completely in accord with the provisions of subsection (2) of section 345, Cr.P.C. read with subsection (7) of section 345, Cr.P.C. besides being in line with the law clearly declared by this Court in the above mentioned case of Muhammad Akram.

6. The learned counsel for the appellant has referred to the case of Syed Iftikhar Hussain Shah v. Syed Sabir Hussain Shah and others (1998 SCMR 466) and also to two judgments passed by one of us (Asif Saeed Khan Khosa, J.) as a Judge of the Lahore High Court, Lahore in the cases of Manzoor Ahmed and another v. The State and 2 others (PLD 2003 Lahore 739) and Mst. Maqsooda Bibi v. Amar Javed, etc. (2002 PCr.LJ 713) to maintain that a compromise entered into at the stage of bail is to enure to the benefit of the accused person even at the stage of his trial. We note that the cases of Manzoor Ahmed and Mst.Maqsooda Bibi had been decided by one of us (Asif Saeed Khan Khosa, J.) at a time when the only judgment of this Court holding the field was that handed down in the case of Syed Iftikhar Hussain Shah v. Syed Sabir Hussain Shah and others (1998 SCMR 466) and in those judgments of the High Court the said

judgment passed by this Court had expressly been referred to and followed. Till that time the judgment passed by this Court in the case of Muhammad Akram v. Abdul Waheed and 3 others (2005 SCMR 1342) had not been rendered and no other view of this Court was available in the field. After passage of the judgment by this Court in the case of Muhammad Akram the situation had undergone a sea change and, thus, the earlier judgments rendered by different High Courts are now to be examined or scrutinized on the basis of the law declared by this Court in the said case of Muhammad Akram. We find ourselves in complete harmony with the legal position declared by this Court in the said case and hold that in all cases covered by the provisions of subsection (2) of section 345, Cr.P.C. no compromise entered into by the parties privately can have any legal sanctity or validity vis- -vis compounding of the relevant offence unless the court before which the prosecution for the relevant offence is pending grants a formal permission accepting the compromise between the parties and in all such cases if no prosecution is pending before any court when the compromise is entered into and no permission by the trial court is granted to compound the offence any compromise privately entered into between the parties cannot be accepted as valid compounding as is declared by subsection (7) of section 345, Cr.P.C. As regards the judgment passed by this Court in the case of Syed Iftikhar Hussain Shah v. Syed Sabir Hussain Shah and others (1998 SCMR 466) we have noticed that in the said case the injured victim had entered into a compromise with the accused person at the stage of bail, in furtherance of that compromise the injured victim had received monetary compensation from the accused person and the accused person had already been acquitted on the basis of the compromise before the matter had reached this Court. In that backdrop this Court had held as under:

> "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 Session 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 and 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."

It was in those peculiar circumstances of the case that this Court had, in exercise of its discretion, refused to interfere in the matter of the accused person's acquittal. The said decision of this Court had proceeded on the basis of the peculiar circumstances of that case and no declaration of law of general applicability had been made by this Court in the judgment passed in the said case.

7. It may be relevant to mention here that section 309, P.P.C. refers to waiver (afw) of right of Qisas in a case of Qatl-i-amd and section 310, P.P.C. mentions compounding (sulh) in a case of Qatl-i-amd and, thus, an issue may crop up in future that the law declared by us through the present judgment in terms of the provisions of subsection (2) of section 345, Cr.P.C. relates to compounding under section 310, PPC and not to

waiver under section 309, P.P.C. We would like to make it clear that it has already been clarified by this Court in the case of Zahid Rehman v. The State (PLD 2015 SC 77) that the provisions of sections 309 and 310, P.P.C. are relevant only to cases of Qisas and not to cases of Ta'zir and a case is to be a case of Qisas only where the provisions of section 304, P.P.C. stand attracted, i.e. where the accused person confesses his guilt before the trial court or where Tazkiya-tul shahood of the witnesses is conducted by the trial court before trial of the accused person as required by Article 17 of the Qanun-e-Shahadat Order, 1984. Be that as it may the fact remains that both such steps required to make a case one of Qisas are relevant to a trial court and, thus, even waiver or compounding provided for in sections 309 and 310 are relevant to a trial court and not to any stage before the case reaches the trial court.

8. For what has been discussed above we have found the impugned judgment passed by the High Court to be based upon a correct understanding and application of the relevant law and also in accord with the legal position declared by this Court in the case of Muhammad Akram v. Abdul Waheed and 3 others (2005 SCMR 1342) and, therefore, this appeal is dismissed.

MWA/T-2/S Appeal dismissed.

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