

HIGH COURT OF AZAD JAMMU AND KASHMIR  
*(Shariat Appellate Bench)*

*Criminal Appeal No.49 of 2020;*  
*Date of Institution 10.10.2020;*  
*Date of Decision 03.12.2025;*

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Naveed Ahmed Abbasi S/o Muhammad  
Bashir Abbasi R/o Ghorī Tehsil & District,  
Muzaffarabad.

*Petitioner*

*VERSUS*

1. Ibrahim Abbas S/o Ghulam Abbas R/o  
Ghorī Tehsil & District, Muzaffarabad;

*Accused-Respondent*

2. The State through Advocate General of  
Azad Jammu & Kashmir, Muzaffarabad.

*Proforma-Respondent*

APPEAL AGAINST THE JUDGMENT DATED 08.09.2020

**Before:- Justice Sardar Liaqat Hussain, C.J.**  
**Justice Sardar Muhammad Ejaz Khan, J.**  
*(Division Bench)*

PRESENT:

Kh. Nasir Chisti, Advocate for the appellant.  
Raja Aftab Ahmed, Advocate for respondent  
No.1.  
A.A.G. for the State.

JUDGMENT:

**Sardar Muhammad Ejaz Khan, J.** The instant  
appeal filed by appellant-complainant against

the impugned judgment passed by the learned District Court of Criminal Jurisdiction, Muzaffarabad, on 08.09.2020 whereby an application filed under Section 265-K, Cr.P.C. by the accused-respondent was allowed.

2. Brief facts forming background of the instant case are that on 08.05.2015 complainant, Naveed Ahmed Abbasi, submitted a written report at Police Station, Ghari Dupatta, stating therein that the incident is of 04.05.2015 that his real brother Nabeel Bashir Abbasi left home at about 01:00 P.M. and did not return home until 09:00 P.M. while his search was started for which all the relatives were informed but they showed ignorance regarding his whereabouts. On 08.05.2015, a written report regarding missing of his brother was submitted at Police Station, Ghari Dupatta. Today, i.e. 10.05.2015 in the evening at about 07:00 P.M. Mehmood S/o Roshan Din R/o Gori told that body of unidentified person

is lying in the Gori stream. On this information, he along-with his relatives reached at the spot and saw that dead body of his brother Nabeel Bashir is lying in stream whose two hands were cut off with an axe and were not found at the spot while feet were tied with a white shirt who was brutally murdered by unknown person/persons. He has no enmity with others, hence, necessary proceedings may be initiated against the unknown culprits.

3. On this report, a case illat No.44/2015 was registered in offence under Section 302 APC at Police Station City, Ghari Dupatta, on 10.05.2015. The police started investigation and after investigation, a report under Section 173 of Cr.P.C. has been submitted before the learned trial Court in offences under Sections 302/34 APC & 14 EHA on 15.10.2019 while during the trial proceedings evidence of some of P.Ws was recorded. Meanwhile, an application has been

filed under Section 265-K, Cr.P.C. on behalf of accused-respondent on 11.01.2020 whereupon the other side filed objections on 16.01.2020 in which contents of application were denied in toto. The learned trial Court heard the respective arguments on the aforesaid application and acquitted the accused-respondent of the charge while exercising powers under Section 265-K, Cr.P.C. vide impugned judgment dated 08.09.2020, hence, this appeal.

4. Heard. Record perused.

5. The point is yet to be determined that whether the learned trial Court rightly exercised its powers conferred under Section 265-K of Cr.P.C. in the light of prosecution evidence brought on record. For proper appreciation of the matter, Section 265-K of Cr.P.C. is reproduced as under:-

*“265-K. Power of Court to acquit accused at any stage. Nothing in this Chapter shall be deemed to prevent a*

*Court from acquitting an accused at any stage of the case; if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence.”*

6. The scheme of the above quoted Section is that the Court is empowered to acquit the accused at any stage of proceedings where there is no probability of the accused being convicted of alleged offence because the sole object to exercise such powers is to prevent fruitless trial and secure the hardships of the innocent persons but even then Court cannot deprive the prosecution by affording an opportunity to provide material evidence under the grab of this Section. Thus, it is mandatory for the Court while exercising powers conferred under Section 265-K of Cr.P.C. to assign valid reason with sole object to prevent futile trial of the case where it is apparent on the face of record that there is no probability of the accused being convicted of the offence.

7. After detailed appreciation of prosecution evidence, we have no hesitation in our mind that the evidence of some important 06 P.Ws has been produced out of 30 before the Court of competent jurisdiction during the trial proceedings and remaining evidence, which has to be produced, if believed as true even then the same would not be able to establish the charge levelled against the accused-respondent, hence, there would be no probability of his conviction of the alleged offence while no conviction can be recorded on the basis of presumption because the presumption how may be strong, it cannot take place of proof. In such like state of affairs, if the case is remanded to the learned trial Court for full dress trial in view of available evidence on record even then further proceedings would be a futile exercise to that extent and no fruitful purpose will be served.

8. It is pertinent to mention here that the learned Court below has rightly exercised its powers while allowing the application filed under Section 265-K of Cr.P.C. for which no perversity or arbitrariness appears to have been found in the impugned judgment. Even otherwise, the learned counsel for the appellant failed to point out any irregularity or illegality in the impugned judgment dated 08.09.2020, hence, the reasons assigned for allowing the application filed under Section 265-K, Cr.P.C. are quite justified, which do not call for any legal interference by this Court.

9. The outcome of the foregoing reasons is that the instant appeal, finding no force, is hereby dismissed and the same shall be consigned to record. However, this judgment shall not make any room for principal accused. As the matter seems to be too old, hence, the learned trial Court is directed to decide the matter within a shortest possible time. A copy

of this judgment shall be sent to the concerned quarter for intimation and compliance.

Muzaffarabad:                      **CHIEF JUSTICE**                      **JUDGE**  
03.12.2025(J.ZEB)

*Approved for reporting*

**CHIEF JUSTICE**                      **JUDGE**