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1. **Meaning and object.**

The oxford Dictionary has defined the "acquittal" as the process of freeing or being freed from a charge especially by a judgment of not guilty.

In Black's Law Dictionary it is given the following meanings:

"the legal and formal certification of the innocence of a person who has been charged with crime; deliverance or setting free a person from a charge of guilt; finding of not guilty. Also, one legally acquitted by a judgment rendered otherwise than in pursuance of a verdict, as where he is discharged by a Magistrate because of the insufficiency of the evidence, or the indictment is dismissed by the court for non-prosecution".

2. **Law and Relevant Provisions.**

Sections 245, 249-A, 265-H and 265-K of Cr.P.C. deal with the acquittal of an accused. Section 345 Cr.P.C. makes provisions for compounding of offence which has the effect of acquittal of the accused. Besides that section 249 Cr.P.C. empowers the Magistrate to stop proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon release the accused.

3. **Scope and Application.**

Section 249-A Cr.P.C. empowers the Magistrate to acquit the accused at any stage of the proceedings after hearing the Prosecutor/complainant and accused and for reasons to be

recorded if he considers the charge to be groundless or there being no probability of accused's conviction for any offence. P.Cr.L.J. 973 (b)). Whereas 265-K Cr.P.C. is meant for (1997) Trial for the same purpose.

Section 249-A Cr.P.C. is an exception to normal rule that acquittal takes place after full trial. This provision reflects a compromise between collective good of society and rights of a individual offender. Idea is to spare offender rigors of full trial if Court at any stage finds that charge is groundless and prosecution is not likely to succeed. (PLJ 2004 S.C. 2). Section 249-A Cr.P.C. empowers the Magistrate to acquit the accused at any stage of the proceedings after hearing the accused at complainant and accused and for reason to be recorded if he considers the charge to be groundless or there being no probability of accused's conviction for any offence. (1997 P.Cr.L.J. 973; PLD 1996 Kar. 253).

4. **Section 245, Cr.P.C.**

Section 245 empowers the Magistrate to acquit the accused upon taking evidence as referred to in section 244 and such further evidence as he may cause to be produced finds the accused not guilty. Magistrate after recording evidence and examining accused can record acquittal as provided under this section (1986 P.Cr.L.J. 1812). An order of acquittal passed before the evidence on both side is over, is not in accordance with law and is liable to be set aside. (AIR 1950 Lah. 40).

5.

Section 249-A Cr.P.C. Reproduced.

"249-A Power of Magistrate to acquit accused at any stage. 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".

Section 249-A is equally applicable to cases of private complaints. Section 249-A, Cr.P.C. is not attracted to complaints particularly when charge has not framed. Section 249-A is equally applicable to cases of private complaints. (PLJ 1995 Cr.C. (Pesh) 162; 1982 P.Cr.L.J. 1039).

6. Section 265-H Cr.P.C.

265-H. Acquittal or Conviction. (1) If in any case under this Chapter in which a charge has been framed the Court finds the accused not guilty; it shall record an order of acquittal.]

(1) If in any case under this chapter the Court finds the accused guilty

the court, subject to the provisions of section 265-H, pass sentence upon him according to law.

7. Section 265-K Cr.P.C. Reproduced.

" Nothing in this chapter shall be deemed to prevent a Court from acquitting an accused at any stage of the case, 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".

8. Power of the trial Court to acquit.

Section 265-K empowers the trial Court to acquit the accused at any stage even if the witnesses are not examined (1991 P.Cr.L.J. 644). Object of section 265-K, Cr.P.C. is to acquit the accused if the Court considers that there is no probability of his being convicted of an offence and such an order can be passed at any stage of the case including the stage even before conclusion of the trial. (2003 YLR 1208). Provisions of this section have been inserted to prevent rigours of a prolonged trial when it is apparent from the record that there is no probability of the accused being convicted of any offence. (1997 MLD 2198). Jurisdiction under this section can be exercised

normally by the trial Court if accused is being prosecuted without proper material implicating or connecting him with the commission of any offence. (1991 MLD 228).

9. **Grounds of Acquittal.**

Accused filed application under section 265-K, Cr.P.C. before trial Court seeking his acquittal on the ground that neither prosecution had produced any evidence against him in support of the charge against him nor there was any evidence with prosecution to prove charge against him. Investigating Officer, on such application of accused, moved application before Trial Court for discharge of accused from the case and Court in the light of application of Investigating Officer, instead of acquitting accused of the charge, discharged him from the case on grounds that Court had not yet taken cognizance of the case and that unless Court had done that it could not acquit the accused and also that challan had not been submitted by the prosecution. Application submitted by Investigating Officer for discharge of accused embodied unanimous view of the lowest to the highest functionaries of the Federal Investigation Agency that in fact no evidence was available with the prosecution to prove the charge leveled against accused. Such application and reports made therein by all concerned, for all intents and purposes was the final report within contemplation of section 173 Cr.P.C. which could legitimately be made basis of an order of acquittal in favour of accused. Formal framing of charge for passing an order of acquittal in favour of accused, was also not a condition precedent. In face of plain confession on the part of the prosecution that it had no evidence whatsoever to prove the charge against the accused, he was entitled to an order of acquittal. Order of Trial Court discharging accused from charge instead of acquitting him of the charge, which ran counter to the express language of section 265-K, Cr.P.C. was set aside and accused was ordered to be acquitted of the charge. (1998 P.Cr.L.J. 2051).

The power is to be exercised sparingly and in exceptional cases of hardships to the accused. However, the guiding factor

should be securing of justice by passing that order under section 249-A Cr.P.C. so as to relieve the accused of undue harassment from appearing in Court on every date of hearing, but witnesses forthcoming inspite of adopting all measures for production in Court, as provided under the Code of Criminal Procedure. In all such cases a duty is cast on the Presiding Officer.

Firstly; to satisfy whether the summons have been issued to the witnesses if returned unserved see the endorsement of process-server. If the circumstances so warrant, to adopt coercive measures;

Secondly; in the case of non-service upon the witnesses repeatedly, the process server should be examined to see if there is any omission on the part of the police to serve the summons on the witnesses; and

Thirdly; in cases where the accused is in custody, his case may be considered for granting bail on account of undue delay due to non-appearance of witnesses persistently.

Even in the case of hardships to the accused, it should be borne in mind that the accused are on bail or not, if they are already on bail then there seems to be no valid reason except in exceptional cases to release the accused without conviction or acquittal. (1989 P.Cr.L.J. 1366).

10. **Contradictory statements of eyewitnesses.**

Contradictory statements of eyewitnesses before police is no ground to conclude that there is no probability of accused being convicted. The Trial Court is competent to believe any one of these statements and it is premature to say as to which of the statements was false. (1991 P.Cr.L.J. 431).

11. **Withdrawal of complaint bars retrial.**

Acquittal of accused on withdrawal of complaint bars retrial under section 403 (1) Cr.P.C. (1993 P.Cr.L.J. 576 + P.L.J. 1993(Cr.) Lahore 16). Where the complaint is dismissed for non-prosecution, the provision of section 248 would not be attracted.

Generally the Court having issued process after recording statement of the witnesses u/s 200 Cr.P.C. and after having found a prima facie case is made out should not record an acquittal order without providing an opportunity to the complainant to adduce further evidence after framing of charges but in a fit case the trial Court can record an acquittal order u/s 249-A Cr.P.C. or section 265-K Cr.P.C. even without framing of charge or recording of the evidence if the facts of the case and the dictates of justice so demand. It will be unreasonable and contrary to the spirit of law if it is held that even in a case where the trial Court should not have initially issued the process is not entitled to rectify the mistake at the earliest opportunity in order to eliminate harassment and inconvenience to the accused party. (1989 P.Cr.L.J. 1223).

Upon taking the evidence----- What is contemplated in section 245 is taking of evidence by the Magistrate. The condition does not stand complied with by only looking in the police papers which do not form part of a record of the case, and what they contain is no evidence in law. An order of acquittal passed, is illegal. (AIR 1968 Guj 15).

15. Acquittal on the basis of compromise.

Accused having been acquitted in view of statement regarding compromise, appeal would lay to High Court against judgment of acquittal passed by the Trial Court under section 417, Cr.P.C. and application filed by the petitioner for recalling of judgment of acquittal was not competent before Trial court. It could not review or recall its judgment. (2003 P.Cr.L.J. 1906).

16. Stopping of proceedings—Suo Motu

stoppage of proceedings suo motu without issuing summons to the witnesses or adopting coercive method is arbitrary and against law (1989 P.Cr.L.J. 1366).

Stopping of case under section 249 Cr.P.C. does not terminate the proceedings finally as the case is discharged nor accused acquitted and the proceedings taken still pending. Sessions Judge therefore, could

such pending proceedings from the Court of Magistrate to his court and pass an appropriate order for reviving the same. (1993 P.Cr.L.J. 1612 = 1993 MLD 2342).

Section 249, Cr.P.C. applies to cases instituted otherwise than upon complaint. As order under this section does not amount to acquittal or to a discharge. A Magistrate of the first class or any other Magistrate with the previous sanction of the district Magistrate for reasons to be recorded by him may stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and there upon release the accused. The stopping of proceedings under this section is not an acquittal to bar further proceedings. Section 403 Cr.P.C. specifically has been made inapplicable. (1993 MLD 2342).

The word "release" used in section 249, Cr.P.C. cannot be confused with acquittal. Accused may be on bail and not in jail at time of passing order under section 249, Cr.P.C. Release in such a case can only be construed to mean release from liability from attending court and consequent upon stoppage of proceedings, case comes to an end for indefinite period. Accused is, therefore, no longer required to attend until availability of evidence justifying revival of case against him. (1986 P.Cr.L.J. 1272).

17. **Liability of surety.**

Liability of surety which extends to accused's regular attendance in Court would come to an end. (1986 P.Cr.L.J. 1812).

18. **Discharge due to non appearance of the complainant.**

Section 247 deals with non-appearance of the complainant. Section 247 gives discretion to the Court to acquit the accused in case of non-prosecution of the complaint unless the Magistrate for some reasons thinks proper to adjourn the hearing. Section 248 allows withdrawal of complaint at any time before a final order is passed. If complainant is not interested in the case either because the matter has been compromised or he does not want to proceed with the case or remains absent for

any other reason, Magistrate is empowered to acquit the accused. (1990 P.Cr.L.J. 1699).

19. **Charge is groundless.**

No impediment exists in the way of Trial Court to acquit the accused at any stage of the case after or prior to the framing of charge and for this purpose Court is free to look into the police papers, other material and legal aspect of the case. Exercise of such power is, however subject to the conditions; (i) that Trial Court should afford an opportunity to the prosecutor and in a complaint case to the complainant, before recording an order of acquittal and (ii) that the Magistrate, for reasons to be recorded, considers that the charge against the accused is groundless or that there is no probability of the accused being convicted of any offence. (1998 SCMR 1840).

Charge cannot be said to be groundless within meaning of section 249-A if complainant is not given an opportunity to prove allegations leveled by him in FIR. Hasty order of acquittal passed by Additional Sessions Judge, in revision against order of trial Magistrate who had dismissed accused's application, set aside by High court by accepting complainant application under section 561-A and remanding case for trial of acquitted accused. (NLR 1993 Cr.L.J. 204).

Word "groundless" as used in this section is not capable of any precise definition, which however, means when there are no good grounds for charge, the word charge means a formal accusation of criminal liability. (1991 P.Cr.L.J. 110). If a Magistrate judicially comes to conclusion that no criminal offence is made out, he can acquit accused under section 249-A Cr.P.C. (1990 p.Cr.L.J. 347). When charge is framed it can be presumed that prima facie case is made out. Proceedings should not be quashed. (1986 MLD 1084). Where in addition to FIR and statement under section 161 Cr.P.C. some of the PWs are recorded showing allegation attracted offences charges, the order of charge being groundless or time being no probability of

the accused being convicted, would be pre-mature. (2003 YLR 2742).

Magistrate can record acquittal order even if charges not found groundless but the circumstances so demand. Some of the witnesses expired while other not available, case not finalized inspite of lapse of 14 years, order of acquittal not unjust. (1985 P.Cr.L.J. 2805). Despite more than 30 adjournments prosecution could produce only six out of twenty prosecution witnesses. Acquittal not unjust (1984 P.Cr.L.J. 1486). Version of the prosecution completely belied by prosecution witness. Prosecution not declaring said witness to be hostile. In the application of section 249-A, Cr.P.C. what is to be seen is that the remaining witnesses as they stand can improve the case of prosecution. If the answer is in the negative the recording of the remaining witnesses would result into wastage of public time for no benefit to the prosecution. Order of acquittal without exception. (2000 PSC CrI. SC 73).

20. Acquittal of accused on the basis of affidavits.

Accused declared innocent on the basis of affidavits sworn by respectable of locality on Holy Quran. Practice depreciated. No illegality or infirmity committed by trial Court summoning the accused to face trial.(2001 YLR 1368).

Affidavit produced by a party has no evidentiary value unless the deponent is made available for cross-examination to the other side. (1995 P.Cr.L.J. 929). Court acquitting accused by accepting affidavit of father of injured person attested by Oath Commissioner without appearance in the Court and by allowing compromise of offence which was not compoundable, acted in violation of procedure. (PLD 1985 Lah. 345).

21. Acquittal under section 249-A Cr.P.C.-----Remedies.

Perusal of the provisions of subsection (2) of section 417 Cr.P.C. clearly indicates that against the order of acquittal, the remedy open to the complainant is by way of a petition for leave to appeal before the High Court and as such the revision petition

the accused and that reasons are recorded in support of the conclusion that the charge is groundless and there is no probability of the accused being convicted. (2002 MLD 293).

27. **Non production of evidence.**

An order of acquittal without examining the material prosecution

witnesses is illegal. (1990 P.Cr.L.J. 2341). (Guj)) Magistrate acquitting accused on consideration of documents not placed by police before Court but produced by police party and giving no opportunity to the complainant or I.O. to produce evidence in rebuttal

order of acquittal illegal. (1986 P.Cr.L.J. 1278). Likewise Magistrate cannot disbelieve a witness unless examined on oath (1986 P.Cr.L.J. 1278) Truth or otherwise of chance witnesses would depend upon antecedents and character of individual witnesses and circumstances of each case in which they were associated with occurrence. Before evidence of such witness was recorded and sifted in accordance with established principle of evaluation of evidence, it was wrong to assume that their evidence was not worthy of credit. (1986 P.Cr.L.J. 1278).

28. **Order of acquittal.**

Complaint dismissed on technical grounds such a lack of jurisdiction or for want of proper sanction, order to be made would be that of discharge and not that of acquittal. Fresh complaint not barred. (PLD 1984 SC (AJ & K) 127; 1972 P.Cr.L.J. 424; PLD 1956 Lah. 87). Accused released in absence of sanction from prosecution. On receipt of such sanction summoning of accused to face trial not barred. (PLD 1984 Lah 147). Order of Magistrate canceling, on police report challan in an earlier case, an administrative order does not amount to discharge of accused so as to create a bar against fresh prosecution. (PLJ 1974 Cr.C. Lah. 553).

Magistrate after hearing the parties coming to the conclusion that the accused having acted in a bona fide manner and having no mens rea for the commission of the offence, his prosecution was uncalled for Magistrate accordingly invoking the powers under section 249-A instead of recording an acquittal order made an order regarding cancellation of case. Order held, neither suffering from any patent illegality nor contravened the canons of justice. (1997 P.cr.L.J. 1607).

30. **Dismissal of complaint/acquittal of accused—Effect.**

Consequences flowing from a mere dismissal of the complaint and acquittal of the accused are on only different but significant in their import. In the former case the scope for bringing the accused to book remains open whereas in the latter case the accused is finally and irrevocably, subject to appeal if any, absolved of the charges leveled against him. (PLD 1989 Pesh. 28).

31. **Court of first instance should be moved first.**

Resort cannot be had to the provisions of section 561-A Cr.P.c. where alternative remedy under section 249-A Cr.P.c. is available to accused. (1996 MLD 1368(a)). High Court cannot exercise its preserved jurisdiction under section 561-A Cr.P.C. to provide such relief to any person which can be sought under section 249-A Cr.P.C. from the Magistrate or under section 265-A Cr.P.C. from the Sessions Court except in the cases of extraordinary nature or circumstances. (1996 P.cr.L.J. 80(d)).

Superior Courts decline to interfere if party had not availed of ordinary remedy by moving application under section 249-A Cr.P.C. in the Court below. (PLD 1967 SC 317; 1986 P.Cr.L.J. 2239) It is the general practice of High Court not to exercise its powers under section 561-A Cr.P.C. or under section 497 Cr.P.C. if applications are moved there under directly to High court. (1997 NLD 1394) Such petitions should be made

before the Court of the lower grade first. (1996 MLD 1368) High Court in exceptional cases can however, exercise its jurisdiction under section 561-A Cr.P.C. without waiting for Trial Court to pass order under section 249-A & 265-K Cr.P.C. if the facts of the case so warrant to prevent abuse of the process of any Court or otherwise to secure the ends of justice. (PLD 1977 SC 275(b)).

32. **Instance where application u/s 265-K Cr.P.C. not allowed.**

It is necessary for the trial Court to record reasons for acquittal of accused. (1993 P.Cr.L.J. 5) If the charge is such which may necessitate recording of evidence without which no positive conclusion can be drawn, the proper course for the aggrieved person would be to wait till material evidence is recorded and then press for his acquittal under this section. (1991 MLD 540, 1983 SCMR 775, 1985 SCMR 257, 1979 SCMR 94).

Framing of charge raises a presumption that police papers laid before Court disclosed prima facie case against the accused. (1986 P.Cr.L.J. 1684). Charge not declared to be groundless or that there was no probability of accused to be convicted of any offence, section 249-A cannot be invoked. (1986 MLD 2463).

33. **There is a remarkable difference between the two orders under section 245, Cr.P.C. and under section 249-A Cr.P.C.**

There is a remarkable difference between the two orders under section 245, Cr.P.C. and under section 249-A Cr.P.C. although under both sections, the Court can pass the order of acquittal and if the order of acquittal is passed under section 245, Cr.P.C. of course, appeal would be competent under section 417, Cr.P.C. as the appellate court can upset the order of acquittal under section 423 Cr.P.C. and pass the order of conviction accordingly. If the acquittal is under section 249-A, Cr.P.C. then, this order cannot be challenged in appeal as the appellate Court would not be in apposition to convert the

45. First prosecution of accused under the Customs Act had not reached any conclusion. Second trial of accused under the NAB Ordinance, therefore, is neither violate of Art. 13(a) of the Constitution nor in contravention of section 403(a), Cr.P.C.(PLD 2003 Kar. 97).

46. **Principle of double jeopardy & constitution of Pakistan.**

Rule against autre fois acquit finds place in section 403(1) Cr.P.C. and the counterpart of the said rule "autrefois convict" has received recognition in the said rule "autrefois convict" embodied in Art. 13(a), Constitution of Pakistan (1973). Essentials to get benefit of section 403, Cr.P.C. are that the parties in two trials must be the same and the facts and issues proved or not in the earlier trial must be identical with what is sought to be reagitated in the subsequent trial.(PLD 1990 Kar 286). If one trial ends in conviction and punishment and in the second case accused is acquitted, and the two judgment are placed in juxtaposition and it becomes evident that the judgment of conviction in point of time is rendered first, judgment of conviction will hold the field. Subsequent acquittal of accused thus cannot reflect upon his conviction and sentence awarded to him on the basis of the trial. Provisions of section 26, General Clauses Act, 1897, does not debar on the simultaneous prosecution but prohibits duplicate punishment and not the trial.(1995 SCMR 626). Petitioner and complainant in a previous case entered into a compromise as a result of which the case was cancelled but not an merits. Petitioner not acquitted. Principle of autrefois acquit not attracted. 1991 P.Cr.L.J. 843).

47. **Principle of double jeopardy.**

For all practical purposes trial of accused was before Special Judge(Central) relating to same offences for which accused had already faced trial before the Special Military courts and was either acquitted or convicted. Second trial by Special Judge(Central) was barred under provisions of section 403,

Cr.P.C. The conviction and sentence were sent aside, in circumstances. (1984 P.Cr.L.J. 1962).

In order to bar the trial of any person already tried, it must be shown (1) that he has been tried by a competent Court for the same offence or one for which he might have been charged or convicted at that trial, on the same facts, (2) that he has been convicted or acquitted at the trial, and (3) that such conviction or acquittal is in force. The rule laid down in this section is similar to the one laid down in section 11 of the Civil Procedure Code, namely Principle of res judicate.

Section 403, Cr.P.C. contemplates of a situation where a person having once been tried by a Court of competent jurisdiction and acquitted by such Court cannot be tried against for the same offence nor for any other offence based on similar facts. (1997 MLD 1672 (C)).

Second trial is barred when the accused is convicted or acquitted, that is, the cause must have been heard and determined. There is a distinction between "acquittal" and "discharge". Discharge of the accused does not amount to an acquittal. A person is said to be discharge when he is relieved from legal proceedings by an order which does not amount to judgment which is the final order in a trial terminating in either conviction or acquittal of the accused. An order of discharge is not a judgment. A discharge leaves the matter at large for all purpose of judicial inquiry, and there is nothing to prevent the Magistrate discharge the accused, from inquiring into the case.

48. **Two trial for one offence---- hit by principle of double jeopardy.**

Narcotic was recovered from petitioners is departure hall of International Airport. Department had initiated two trials one before the Special Judge (Customs and Taxation) u/ss 2(s), 16, 178, 156(1)(8)(82)(89), Customs Act and the other before special Judge u/s 9 (c) of Control of Narcotic Substances Act, 1997. Application u/s 265-K Cr.P.C. filed by the petitioners before the Special Judge was dismissed. Contention by the department was

that without conviction or acquittal by the Court of competent jurisdiction, petitioners could not be said to have faced double jeopardy. Trial in the Court of Special Judge(Customs and Taxation) would wither result in conviction or acquittal on the basis of facts evidence and alleged recovery in the case, while the other trial u/s 9 (C) of Control of Narcotic Substances Act, 1997in presence of same facts and in same set of evidence by the Special Judge would patently result in a duplicate punishment or at least a duplicate trial in violation of the doctrine of double jeopardy. Aggrieved person could seek the quashing of such proceedings without first having been convicted or acquitted for the same offence by a Court of competent jurisdiction. (PLD 2000.Kar 181). Accused tried on the same offence in the private complaint and ultimately acquitted. Subsequent trial for the same offence is not allowed. (2003 MLD 1841).

49. **Principle of Res Judicata.**

If an accused is tried on certain charges acquitted, it will be clearly unjust and highly oppressive and amount to an abuse of the process of the Court to permit his repeated prosecution on identical evidence in respect of identical charge even though relating to different items. In case of acquittal where section 403 does not apply in terms, the principle of *autrefois acquit* embodied in the section may be properly invoked in order to meet the ends of justice. (PLD 1965 Lah. 461). The evidence of recovery of a fire arm cannot be taken into consideration in a subsequent trial for murder when the accused has been acquitted on the same evidence previously of a charge under the Arms Act.(PLD 1957 SC (India) 1); 2000 YLR 2173; 2000 P.Cr.L.J. 1002).

In order to bar the trial of any person already tried, it must be shown (1) that he has been tried by a competent court or the same offence or one for which he might have been charged and convicted at that trial, on the same facts, (2) that such has been convicted or acquitted at the trial, and (3) that such conviction or acquittal is in force. The rule laid down in this

section is similar to the one laid down in section 11 of the Civil Procedure Code, namely Principle of *res judicata*.

50. Trial under two different enactment on the basis of common set of facts.

Offence of smuggling of heroin is punishable under Customs Act, 1969 whereas possession narcotic drugs (heroin) is punishable under Control of Narcotic Substances Act, 1997. Offences against accused are not same but are distinct, accused can be tried before two different Courts under two different enactment on basis of common set to facts and trial will not be barred. Accused are not sent up to stand trial in different Courts, under same offence but under distinct and different offences. Trial of accused is not barred under Art. 13(a) of Constitution of Pakistan (1973) or section 403, Cr.P.C. or on principle of "double jeopardy", "autrefois acquit" or "autrefois convict" and "memo debet bis vexari pro una et eadem cause". Merely because accused are not sent up for trial on common set of facts, is no ground for quashing of proceedings pending against them in court of Special Judge for the trial of cases under Control of Narcotic Substances Act, 1997. (2000 P.Cr.L.J. 956; PLD 1990 FSE 63; 1994 P.Cr.L.J. 428; Contra Ref. PLD 1973 Lah 188; 1979 P.Cr.L.J. 24; 1989 P.Cr.L.J. 821; PLD 1993 SC 247; 1995 SCMR 626). Still in another case it is held that the offence of smuggling and carrying of narcotics being one and the same, the second trial is barred in view of Art. 13 of the constitution section 26 of the General Clauses Act, 1897 and section 403 of Criminal Procedure Code, 1898. Same evidence having to led second trial a nullity in the eyes of law. (2000P.Cr.L.J.1002; 2000 YLR 217; 1999 MLD 2382; PLD 1990 Kar 286; 1995 SCMR 626).

51. Remedy against...