

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Revision Application No.S-93 of 2016

Applicant: Muhammad Ayoob in person.

The State: Mr. Shawak Rathore, D.P.G.

Date of hearing: 23.04.2025

Date of decision: 23.04.2025

J U D G M E N T

MIRAN MUHAMMAD SHAH, J.- Applicant has filed this Criminal Revision Application where being aggrieved and dissatisfied with the Judgment 17.05.2016 passed by the learned 1st Additional Sessions Judge Badin in Criminal Appeal No.11 of 2014, whereby learned 1st Additional Sessions Judge Badin dismissed the appeal and Judgment dated 24.5.2014 passed by the Court of learned 2nd Civil Judge & Judicial Magistrate Badin in Direct Complaint No.(Old) 04/20125 and (New) 02/2013 whereby the learned Magistrate was pleased to hold the appellant guilty and convicted him to suffer R.I. for six months and to pay fine of Rs.5000/-.

2. Brief facts of the case are that Direct Complaint was filed by the Sessions Judge, Badin through Reader of Sessions Court, Badin, facts thereof are reproduced hereunder: -

"The above named ASI Muhammad Ayoob S/O Allah Dino Khaskheli, R/o Badin is PW / Mashir in Sessions Case No.17/2011 (State Vs. Gul Muhammad & Another), under section 9/C, Narcotics Act, Crime No.217/2011, PS Badin. His evidence has been recorded on 25-11-2011 in which he has stated that "tied bundle of cloth was opened in his presence and in presence of ASI Yaseen, wherein he found six plastic white thelies each contained two pieces of Charas. On each piece of Charas seal "Zong 2011" was affixed. The Charas was weighed which became six K.Gs. Complainant took five grams from each piece total 60 grams for chemical examiner and sealed the same separately in white cloth bag parcel. Whereas, remaining property along with towel and plastic bag was sealed in a white cloth bag parcel. Both mashirs as well as, complainant signed on the parcel. The

complainant prepared such memo in presence of ASI Muhammad Ayoub Khaskheli and in presence of co-mashir ASI Muhammad Yaseen Brohi. The contents of mashirnama were read over to ASI Muhammad Ayoub Khaskheli and co-mashir ASI Muhammad Yaseen and they both put their signatures. The above evidence was recorded in absence of accused who was proclaimed offender. After arrest of accused evidence of ASI Ayoub was recorded on 09-10-2012 in which he has stated that "on 29-06-2011 he along with SHO Aslam Khanzada and ASI Yaseen Brohi and other staff members left PS vide entry No.13 at 10.30 a.m. for arrest of absconding accused. During patrolling from different places, when they were on Hyderabad road, they received spy information that accused Ghulam Muhammad alias Guloo was present at his Otaq who was absconding in a Crime of PS Badin. They reached at the Otaq where they saw the accused Guloo and Saleem were present on motorcycle at the Otaq. There was bundle of cloth lying between them on motorcycle. On seeing them Saleem ran away on his motorcycle, while accused Guloo took bundle of cloth and tried to run away. They chased Guloo on which he left the bundle and ran away in his house. They checked the bundle of cloth, opened the same in which six plastic thelies were lying on which Zong 2011 was mentioned. The Charas were lying in all six packets. They then arranged for scale and weighed Charas. Each theli was containing 1000 grams of Charas, total weight of Charas was six kilograms. They took ten grams each from all six thelies and sealed same as sample, whereas remaining property was sealed separately. He prepared memo on which ASI Yaseen Brohi and SIP Aslam Khanzada signed. Thereafter, property was brought at police station where SIP Aslam Khanzada lodged FIR on behalf of the State. He does not know the name of 10, but his statement was recorded by the IO. He saw the memo of Exh.4/C. It is same correct and bears his signature. As such ASI Muhammad Ayoub was declared as hostile by learned DPP and was cross-examined by learned DPP. During cross-examination, he has admitted that he had appeared before this Court and his evidence was recorded on 25-11-2011, but he has denied that he had stated in his previous evidence that there were two pieces each in one plastic bag and the complainant took five grams each from all the 12 pieces as sample for sending to chemical examiner. ASI Muhammad Ayoub Khaskheli further stated that he cannot say that he signed as mashir on the memo along with ASI Yaseen and there is signature of SIP Aslam Khanzada as complainant. But when memo Exh.4/C was shown to him, he has stated that it bears his signature and signature of ASI Yaseen as mashir and so also signature of SIP complainant Aslam Khanzada. ASI Muhammad Ayoub has denied that on 25-11-2011 he had given correct evidence as accused was absconder and now accused has been arrested, hence he has been won over by accused for getting benefit from him. Therefore, he has not deposed true facts of the prosecution case. It appears that ASI

Muhammad Ayoub deliberately and intentionally gave false evidence during judicial proceedings of case, after arrest of the accused Muhammad Saleem. Notice was given to ASI Muhammad Ayoub Khaskheli, who has submitted reply which has been found un-satisfactorily and it was ordered by this Court that offence under section 193, 211, PPC has been made out against ASI Muhammad Ayoub Khaskheli as he has committed the offence for giving false evidence in the judicial proceedings. Therefore, this complaint is being filed against ASI Muhammad Ayoub Khaskheli PS Badin for disposal according to law. The complaint has been filed by this Court, hence complainant has been exempted from evidence and clerk of the Court will produce all the necessary documents before the concerned Court. Copies of the depositions recorded by this Court along with show cause notice and reply submitted by ASI Muhammad Ayoub Khaskheli are attached herewith".

3. The learned trial Court after assessing the material issued show cause notice against the accused, in result of which he appeared and submitted his explanation and requisite surety, hence after completing formalities the trial was commenced against the accused namely ASI Muhammad Ayoob Khaskheli.

4. The compliance of section 241-A Cr.P.C was observed by the trial Court at Ex.01. Formal charge was framed against the accused at Ex.02, for offence under section 193, 211, PPC, to which he pleaded not guilty and claimed to be tried as Ex.02/A.

5. After the charge in order to prove the case, Reader of Sessions Court namely Ali Muhammad Soomro was examined at Ex.03, who produced direct complaint as Ex.03/A, statement of accused recorded on 25-11-2011 at Ex.03/B, statement of accused recorded on 09-10-2012 at Ex.03/C, show cause notice issued to accused and his reply thereon at Ex.03/D and E, thereafter the complainant closed his evidence side vide statement at Ex.04.

6. At the close of trial the statement of accused was recorded under section 342, Cr.P.C at Ex.05, wherein he denied the charge so leveled

against him and stated that on the day of recording his evidence he requested for time as he was not feeling well, but DPP forcibly put him in box without opportunity of preparation. He also produced prescription in support of his statement. He further claimed to be innocent and prayed for justice. The accused did not wish to come on oath as his own witness provided under section 340(2), Cr.P.C and denied to lead defence evidence.

7. That learned Trial Court on conclusion of trial, after hearing the applicant's Counsel and learned ADPP for the State convicted and sentenced the Applicant as stated above vide Judgment dated 24-05-2014. Hence, this Criminal Revision Application.

8. I have heard Applicant in person as well as learned DPG and perused the material available on record. Certain points have very clearly been transpired one being that the presumptuous charge which states that the present Applicant/Convict was won over by the accused for the reasons given in the first session of evidence the accused in the case was absconding whereas after one year when the evidence was taken again in presence of the absconding accused who had been arrested by them the evidence of the present Applicant/Convict was contradictory. However no any ground in support of his argument as to on what basis such this presumption was made has been done by the learned Trial Court in its impugned Judgment. The contradictions are absolutely of minor nature and on the plain reading of the impugned Judgment even on the face of it it is not clear what actually the contradictions are based on which the present Applicant/Convict was convicted. Not only convicted but why was he declared hostile and why it was observed or resulted by the learned Trial Court that he had made any false or contradictory statement and based on which direct

complaint was filed and based on which the charge was framed and subsequently conviction was made.

9. Coming to the presumption part no nexus was developed between ASI Muhammad Ayoob and the accused of that case Saleem son of Luqman Mallah who after his arrest was sent immediately behind the bars of District Badin and remained there till his acquittal. He was neither relative nor a friend nor a neighbor of the present Applicant/Convict and there was no possibility that any sort of interaction could have taken place between the two before the second round of evidence was recorded. Accused Saleem son of Luqman Mallah was arrested by different set of police officials. So possibility of any interaction taken place between the two should have been completely ruled out. The learned Trial Court has blatantly passed Judgment which violates the principles of Qanun-e-Shahadat and the principle laid down by honorable Supreme Court based on presumptuous charge.

2019 SCMR 1415

302(b)---Qanun-e-Shahadat (10 of 1984), Art. 121---Qatl-i-amd of wife in matrimonial house---Reappraisal of evidence--Adverse presumption---Scope---Accused's reticence to satisfactorily explain as to what befell upon his wife in their matrimonial home, though somewhat intriguing, could not be equated to qualify as evidentiary certainty, essentially required in order to saddle him with corporal consequences--Failure to provide satisfactory explanation would not give rise to an adverse presumption within the contemplation of Art. 121 of the Qanun-e-Shahadat, 1984 and thus it would be grievously unsafe to maintain the conviction of murder against the accused---Appeal was allowed and accused was acquitted of the charge of murder.

PLD 2017 Federal Shariat Court 63

---Crime and punishment---Conviction---Standard of proof---Scope---No one could be punished on the basis of conjectures, surmises and suspicions---Presumption of innocence existed till the contrary was established by reasonable cogent evidence, as was required by the law---Where the required evidence failed to satisfy the Court affirmatively and bring home guilt of the accused beyond reasonable doubt, the accused stood entitled to acquittal.

2011 MLD 1419

23. At this juncture, I would also like to mention that cardinal principle of criminal jurisprudence is that the burden of proving the case beyond doubt against the accused lies upon the prosecution. Similarly the presumption and probabilities, however, strong may be, could not take the shape of proof. The finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may be irresistible be drawn from the evidence. Mere conjectures and probabilities cannot take the place of proof. If a case were to be decided merely on high probabilities regarding the existence of non-existence of a fact to prove the guilt of a person, the golden rule of benefit of doubt to an accused person which has been a dominant feature of the administration of criminal justice in this country which the consistent approval of the superior Courts will be reduced to a naught.

10. At the same time consists of patent illegalities while convicting a person no matter how minor the nature of the conviction is. The Trial Court must apply its mind judicially that there is delay of almost a year in recording first round of evidence on the second one. The contradictions noted based on which the present Applicant/Accused was convicted were purely of minor nature and such contradictions after a lapse of almost a year are humanly possible. Many times such contradictions even taken place during continuous trial. However on the basis of such contradictions and assumptions that the witness was declared hostile or witness has been won over, conviction was not available. The evidence led i.e. reader of the Court or the Complainant incidentally is the subordinate staff of the Complainant in the direct complaint and no independent evidence has been brought on the record to substantially prove the charge. It is case of more over whatever happened in the Court, it remained in the Court. Incidentally the accused who were in fact at trial in this particular case were acquitted of the charge whereas the person who allegedly gave all evidence was convicted which in a criminal trial is not a fair proposition. The learned

Appellate Court has in a haphazard manner without appreciating the evidence and the facts and circumstances of the case as well as the direct complaint, has relied upon the Judgment of the learned Trial Court. Such kind of observation / conclusion is neither appreciated nor it could be upheld.

11. Even the learned DPG has very halfheartedly supported the case of the direct complaint and conviction and ultimately has given his no objection if the present Applicant/Convict is acquitted and present Revision is allowed. I further rely on following case law:-

(2004 SCMR 1792)

Furthermore, it has been held that the Court concerned must assign good reasons justifying the initiation of proceedings against any person. The Court must reasonably be satisfied about prima facie false evidence. It is also pertinent to mention that mere difference in statements before the Court in evidence and to that made under section 161 is not treated as substantial by the Courts to justify implication for false evidence. It has also been held that the witness/accused correcting or reconciling his conflicting statements immediately or promptly, justifying the inconsistencies, cannot be charged for giving false evidence. The relevant paragraphs as well as complete citations are annexed herewith for ready reference, highlighted for the assistance of the Hon'ble Court.

(2005 YLR 1785)

The examined cases collectively affirm that the prosecution under Section 211 of the Pakistan Penal Code must strictly conform to procedural safeguards and evidentiary thresholds. Courts have consistently held that no action under these provisions is maintainable unless it is first judicially determined that the original complaint was false; mere acquittal of the accused or classification of an FIR as false does not suffice. Further, issuance of a show cause notice prior to initiating proceedings is a mandatory requirement to satisfy principles of natural justice. These precedents underscore the judiciary's insistence on preventing arbitrary or mechanical prosecutions, ensuring fairness and due process in cases alleging false accusations.

12. In light of the above mentioned reasoning and the case law relied upon I hereby acquit the present Applicant/Convict from all the charges which he is facing since 2012. In fact this Criminal Revision Application has been pending in this matter since year 2016. It's been almost 9 years since pendency of this revision merely on the conviction of six months. Conviction which was based on flimsy grounds and based on grounds which were not sustainable in the eyes of law. It is sorry state of affairs to see that officials who while facing the charge during the duty period and after retiring from the service continue to face charges in appeals and end up living under the stigma of being a convict for 13/14 years which is not the spirit of law especially when the conviction is hardly of six months. With such note and heavy heart for the delay caused in dispensation of justice, I hereby **acquit** present Applicant/convict of all the charges by **allowing** the Criminal Revision Application No.S-93 of 2016. These are the detailed reasons in support of my short Order earlier passed on 23.04.202

JUDGE

Ali Haider