

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No. S – 175 of 2017

Appellant/Complainant : Shahbazi alias Shahbaz Ali
through Mr. Shabbir Ali Bozdar Advocate

Private respondent : None present

The State through Mr. Shafi Muhammad Mahar
Deputy Prosecutor General

Date of hearing : 13.12.2019

Date of decision : 13.12.2019

JUDGMENT

AFTAB AHMED GORAR, J.- By filing instant Criminal Acquittal Appeal, the appellant/complainant has impugned judgment dated 14.09.2019, passed by learned Civil Judge and Judicial Magistrate-II Bhiria City, whereby the private respondent has been acquitted of the offence under Sections 489-F PPC arising out of Crime No.70 of 2013 registered at Police Station Tharushah, District Naushahro Feroze.

2. The facts in brief necessary for disposal of instant criminal acquittal appeal are that the appellant / complainant on 22.08.2013 lodged FIR at Police Station Tharushah, stating therein that on 24.10.2012 private respondent Raj Kumar called him and asked for purchase of sugar, hence on the same day, he along with Zakir and Arbelo went to the shop of private respondent, it was 5:00 pm, where the private respondent verbally purchased 179 bags of sugar from him

at the rate of Rs.2500/- per bag total valuing Rs.4,25000/-, as such, the private respondent given cheque of such amount for encashment dated 25.10.2012 of NBP Tharushah, whereas, on the date fixed, the appellant / complainant accompanied his aforesaid witnesses and approached the concerned Bank for encashment of the cheque, but for want of funds, the same could not be encashed, hence they approached the private respondent and apprised him and he sought further time and again on presentation the cheque was bounced, hence such FIR was registered by the appellant / complainant against the private respondent. The private respondent on due investigation was challaned by the police to face his trial before Court of Civil Judge and Judicial Magistrate-II Bharia City for the aforesaid offence.

3. At trial, the private respondent did not plead guilty to the charge and prosecution to prove it, examined the PW-1 complainant Shahbazi alias Shahbaz at (Ex.3), who produced original cheque along with its return memo, order of Court and FIR; PW-2 Arbello at (Ex.4); PW-3 Zakir Ali at (Ex.5); PW-4 Ghulam Qadir, Bank Manager at (Ex.06); PW-5 mashir Raja at (Ex.07), who produced memo of site inspection at (Ex.7/A); PW-6 Ali Akbar at (Ex.8), who produced police letter for verification of memo and then closed the side.

4. The private respondent in his statement recorded u/s 342 Cr.P C denied the prosecutions' allegation by pleading innocence. He neither

examined himself on oath nor led any evidence in defence. However, prayed for his acquittal being innocent.

5. On conclusion of the trial, the learned trial Court acquitted the private respondent vide judgment dated 24.09.2019 which is impugned by the appellant / complainant before this Court by way of instant Criminal Acquittal Appeal U/s 417(2)-A Cr.P.C.

6. It is contended by learned counsel of the appellant/complainant that the prosecution has been able to prove its case against the private respondents beyond shadow of doubt by producing cogent evidence which has not been considered by learned trial Court in its true prospect without lawful justification; that there was documentary evidence which is proved against the private respondent, as according to the evidence of bank manager the cheque and the account belonged to the private respondent and during course of investigation the entire allegations of the appellant /complainant have become true against the private respondents; that there is strong circumstantial as well as documentary evidence available for awarding conviction to the private respondent, but the learned trial Court has not considered such material aspects of the case thus has acquitted the private respondents without assigning any cogent reason. He lastly prayed for setting-aside of the impugned judgment of trial Court and awarding adequate conviction to the private respondent.

7. Learned Deputy PG for the State by supporting the impugned judgment has sought for dismissal of the instant criminal acquittal appeal by contending that there is delay in lodgment of the FIR without any plausible explanation, therefore, the false implication of the private respondent cannot be ruled-out; that there is no such receipt or agreement with regard to the said purchase of sugar by the private respondent from the appellant / complainant; that as per appellant / complainant he had taken the sugar from his brother Abdul Khalique, but the said Abdul Khalique was not examined by the prosecution.

8. I have considered the above arguments and perused the record.

9. Admittedly, there is inordinate and unexplained delay of 10 months in lodgment of the FIR, such delay could not be overruled. In case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, it was observed by the Hon'ble Apex Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

10. Furthermore, the appellant / complainant though had sold 179 bags of sugar to the private respondent, but there is no such receipt or

the agreement regarding the said transaction, whereas, as per the appellant / complainant he had purchased the said sugar from his brother Abdul Khaliq but very surprising that he has not examined the said Abdul Khaliq and there is no date and time of handing over the said sugar to the private respondent by the appellant / complainant, but it was only stated by appellant / complainant and PW Zakir that it was settled regarding the sale and purchase of 179 bags of sugar, hence the private respondent issued such cheque. Furthermore, no original cheque, which was allegedly bounced, was secured by the police during the course of investigation, but later it was produced by the appellant/complainant in his evidence, hence the production of the cheque at later stage at the time of evidence creates serious doubt that it may have been arranged by the appellant / complainant, this was extremely fatal to the prosecution case. Since no such receipt or agreement has been produced by the complainant either during the investigation or at the time of recording his evidence, hence mere version of the appellant / complainant cannot be believed as trustworthy and confidence inspiring. In such circumstances, learned trial Court has rightly acquitted the private respondents by extending them benefit of doubt.

11. In case of **State and others vs. Abdul Khaliq and others (P L D 2011 SC-554)**, it has been held by the Hon'ble Apex Court that;

“The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities”.

12. In view of the facts and reasons discussed above, instant Criminal Acquittal Appeal fails and it is dismissed accordingly.

Judge