

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

### Criminal Acquittal Appeal No. S- 20 of 2018

**Appellant/Complainant :** Karim Dino Memon through  
Mr. Muhammad Iqbal Memon, Advocate

**Respondents :** Anwer Ali, Zulfiqar Ali, Muhammad  
Ashraf, Muhammad Moosa, Ghulam Abbas,  
Muhammad Ramzan, Muhammad Fayaz,  
Imran Khan, Rukhsana, Farzana, Safia,  
Shahnila and Ambreen in person

The State, through Mr. Aftab Ahmed Shar,  
Additional Prosecution General

**Date of hearing :** 29.11.2019

**Date of decision :** 29.11.2019

### **JUDGMENT**

**Aftab Ahmed Gorar, J.-** The appellant/complainant by way of instant Criminal Acquittal Appeal has impugned Order dated 10.01.2018, passed by learned Special Judge, Anti-Corruption (Provincial) Sukkur Camp at Naushahro Feroze, whereby the private respondents have been acquitted under Section 249-A Cr.P.C, of the offence under Sections 409, 463, 467, 468 PPC read with Section 5(2) of Anti-Corruption Act-1947, arising out of direct complaint No.16/2016 filed by the appellant / complainant.

2. Precisely stated, the facts of the appellant/ complainant's case are that he filed a Direct complaint before the Court of Special Judge, Anti-Corruption Sukkur against the private respondents, stating therein that he had a land in partnership in the name of Qadir Bux bearing S.No.15

situated in Kot Bahadur, Taluka Bhiria and was in possession, whereas, F.C Suit No.116/1996 against by Dr. Fazul Muhammad and others being the legal-heirs of Chibhar in respect of the said Survey No.15 and others which was decreed on the basis of compromise and such Decree was passed on 02.06.2000 by the Court of learned 1<sup>st</sup> Senior Civil Judge Naushahro Feroze, such copy of decree was provided to Mukhtiarkar Bhiria who promised that soon he will change the record as per decree. It is further alleged that in the year 2015 the familiar personalities made a faisla which too was in his favour and that he made an application on 19.06.2015 to the officials of Revenue Authorities along with copy of decree passed on 02.6.2000 in F. C Suit No.116/1996 and the private respondent /accused No.2 Mukhtiarkar (Revenue) Bhiria after keeping it pending for about three months, wrote a letter on 11.9.2015 to the District Attorney for legal opinion regarding the implementation of the decree and the District Attorney vide his letter dated 14.9.2015 mentioned that the decree is old one, therefore, has lost its value and cannot be implemented, as such on the basis of the said opinion the khata of the disputed land was changed, as such offence under Sections 409, 463, 467, 468 PPC read with Section 5(2) of Anti-Corruption Act, 1947 has been committed by the private respondents. After preliminary enquiry and hearing the learned counsel for the parties the direct complaint was brought on regular file by the Court of learned Special Judge, Anti-Corruption Sukkur and BWs were issued against the private respondents, who appeared and filed the applications under Section 249-A Cr.P.C for their acquittal, whereas, the complainant also filed an application under

Section 190(3) Cr.P.C for joining the private respondent Muhammad Khan Shar, the District Attorney Naushahro Feroze as accused in the complaint.

3. The learned Judge, Anti-Corruption Court Sukkur vide his common order dated 10.01.2018 dismissed the application under Section 190(3) Cr.P.C filed by the appellant / complainant, whereas, the applications under Section 249- A, Cr.P.C were allowed and the private respondents were acquitted, hence the appellant / complainant has preferred instant Criminal Acquittal Appeal.

4. It is contended by learned counsel for the appellant / complainant that the learned trial Judge has not applied judicial mind while allowing the application u/s 249-A Cr.P.C and has not considered the ground realities; that the learned trial Judge has wrongly observed that the appellant / complainant has not denied the pendency of civil Suit as well as petition regarding the same survey numbers, therefore, the dispute, if any, between the parties is of civil nature, hence acquitted the private respondents before commencement of the trial under Section 249-A Cr.P.C; that the private respondents in collusion with each other fraudulently mutated the revenue record in favour of the private respondents 5 to 13, whereas, private respondent No.4 is Tapedar as beneficiary of the property being husband of private respondent No.9 and the entry No.15 has fraudulently made in the record of rights, whereas, the decree in favour of the appellant / complainant is intact, whereas, District Attorney is legally bound to assist the Court and is not empowered to give such opinion. Lastly he prays that

the impugned order may be set-aside and the case may be remanded back to learned trial Court for trial and passing judgment on merits. In support of his contentions, he has relied upon the cases of ***Waheedullah Khan and 2 others v. Kalimullah and 3 others (2012 M L D 35)*** and ***Bakhtiar Ahemd v. Mst. Shamim Akhtar and others (2013 S C M R 5)***.

5. Learned Additional PG for the State supported the order passed by learned trial Court and sought for dismissal of the instant Acquittal appeal by contending that the decree has been passed in the year 2000, whereas, the appellant / complainant has remained silent for a long period of 15 fifteen years, neither any execution application has been filed, therefore, such decree can be deemed to be a paper decree because it has lost its sanctity, whereas, the remedy available with the appellant / complainant under Section 35 C.P.C for claiming damages or compensation.

6. I have considered the arguments of learned counsel for the respective parties and perused the record. Admittedly, there is dispute in between the appellant / complainant and private respondents over the land bearing Survey No.15 situated in Deh Kot Bahadur, Taluka Bhiria, District Naushahro Feroze and in this regard the appellant / complainant had filed F. C Suit No. 199 of 2015 (re- Gulzar Ali and another vs. Ghulam Abbas and others) before the Court of learned 2<sup>nd</sup> Senior Civil Judge, Naushahro Feroze which has been dismissed vide order dated 30.3.2017. The F.C Suit No.116/21996 filed by (re- Dr. Fazul Muhammad and others vs. Qadir Bux and others) has been decrees vide dated 02.6.2000. The appellant / complainant regarding

the dispute over said survey number has also availed his remedy under the Illegal Dispossession Act, 2005 by filing direct complaint No.28 of 2017 (re-Karim Dino vs. Muhammad Ramzan and others) before the Court of Sessions Judge, Naushahro Feroze. In such situation, the false involvement of the private respondents in this case by the complainant party just to develop undue pressure could not be overruled. In these circumstances, learned trial Court was right to record the acquittal of the private respondents by observing that the provisions of Anti-Corruption law are not attracted in the case, therefore, acquitted the private respondents by allowing their applications under Section 249-A Cr.P.C. It would be conducive to reproduce the relevant portion of the impugned order as under;-

*“Admittedly; prior to putting this complaint on regular file, only learned counsel for complainant side was heard and the complainant and his witnesses nowhere disclosed the pendency of constitutional petitions and Civil Suit No.199 of 2015 which is filed in respect of same survey No.15. The considerations while putting a complaint on regular file are some else while considerations to decide the applications under Sections 249-A Cr.P.C after hearing both sides are else. The pendency of petitions and civil Suit in respect of same survey number has not been denied by the complainant; as such it has now become clear that this is civil dispute between two private parties on private land. Neither government land is involved in the lis before me nor allegations of gratifications and wrongful gain whereby State has been caused damage, has been alleged. Misuse of powers by an authority / official, if any, is something else and does not constitute the offence alleged in the complaint. It appears that the complainant*

*while concealing the facts brought into notice of this Court by the accused persons, attempted to transform a civil dispute into a criminal case while dragging some officials and the Law does not favour to such piece of mind. It would be another forum/Court to determine as to the effectiveness of decree and act(s) done by the officials; however, in the instant case nothing is available to say that the officials made a corruption, wrongful gain and caused damage to the public exchequer in their official capacity being public servant, as required to warrant the jurisdiction of this Court.*

*As a sequel of whatever discussed above, I am of the view that peculiar circumstance do not attract the provision of Anti-Corruption Law as such the proceedings of this complaint while taking of cognizance stands vitiated u/s 530(k) Cr.P.C. The application u/s 190(3) Cr.P.C is dismissed having become infructuous.”*

7. In this regard, reliance is placed upon the case of ***State and others vs. Abdul Khaliq and others (P L D 2011 SC-554)***, wherein 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”.*

8. In view of the facts and reasons discussed above, it could be concluded safely that the impugned order is not calling for any interference by this Court by way of instant criminal acquittal appeal. It is dismissed accordingly. So far as the case-law cited by learned counsel for the appellant / complainant, I am of the humble view that the same are not applicable in the case in hand being on distinguishable facts and circumstances

Judge