

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Acquittal Appeal No. 275 of 2018

[M/s. National Logistic Cell (NLC).....v.....The State and other]

Date of Hearing : 11.04.2025
Appellant through : Mr. Imdad Khan, Advocate
Respondents through : Ms. Rahat Ahsan, Addl. P.G.

ORDER

Amjad Ali Sahito, J:- Through instant Criminal Acquittal Appeal, the appellant has impugned the judgment dated 31.03.2018, passed by the learned Civil Judge & Judicial Magistrate-XXV, Karachi South, arising out of FIR No.37/2017, U/s 489-F PPC registered at PS Boat Basin, whereby accused/Respondent No.2 was acquitted.

2. The allegation against the accused/Respondent No.2 is that he hired vehicles of the Complainant's company for transportation and issued 18 cheques in lieu of the payments; however, when these cheques were presented, 5 cheques were bounced due to insufficient funds and stop of payment. Hence, the instant FIR was lodged.

3. After framing of charge, the prosecution has examined as many as seven (06) witnesses. PW-01 Wali Muhammad at Exh. 3, PW-02, Tahir Javeed Khan at Exh. 4, PW-03 Rizwan Manzoor at Exh. 05, PW-04 SIP Zulfiqar Ali at Exh. 6, P.W-05 Zulfiqar Ali at Exh. 7 and PW-06 SIP Ghulam Murtaza Kaka at Exh. 8. Thereafter prosecution side was closed vide Ex:9 and statement of Respondent No.2 under section 342, Cr.P.C. was recorded, who claimed his innocence, however, neither examined himself on oath nor led defense witnesses in support of his claim.

4. After observing all formalities and hearing the parties, the learned trial Court acquitted the Respondent No.2 through impugned judgment.

5. Learned counsel for appellant submits that being aggrieved with acquittal of Respondent No.2 has preferred instant criminal acquittal appeal on the ground that the impugned judgment is illegal, unwarranted and not sustainable under the law and as a result of non-appreciation evidence by the learned trial Court though the prosecution has adduced corroborative evidence. The appellant prayed for setting aside the impugned judgment and conviction to the respondent/ accused.

6. On the other hand, learned Addl. P.G. supported the impugned judgment.

7. I have heard the arguments of respective parties and have gone through the relevant record. Through the instant acquittal appeal, the appellant has questioned the acquittal judgment in favour of Respondent No.2. After meticulous examination of entire evidence, I have found some critical contradictions due to which the trial Court obliged to give its verdict in favour of the accused. It is considered expedient to reproduce the relevant excerpt of the impugned Judgment and the same is delineated hereunder:-

"In the light of above ingredients, I have gone through the evidence of prosecution witnesses and found that they have failed to bring on record any convincing evidence in order to prove the case. Now firstly I would like to discuss about "Business transaction between parties and Liability upon accused under such transaction". In this regard complainant examined himself and PW Tahir Javed Khan (Senior Manager Marketing in NLC). The complainant deposed in his examination in chief that accused Khalid Samad Bhatti had hired vehicles of company but he did not pay the fare. He further deposed that for the payment of fare/charges he gave 18 cheques of different amounts out of which five cheques were dishonored on presentation before the bank. The complainant did not give any details of the business transaction between accused and company and he also not mentioned about the outstanding amount for which the accused gave 18 cheques to company. In this regard prosecution examined PW Tahir Javed Khan (Senior Manager Marketing in NLC Company) who deposed that accused Khalid Samad Bhatti was in business with their company from 2008 to 2014. He used to hire vehicles for transport and load supply from Karachi to all over the country. He used to issue cheques against payment. He gave eighteen cheques out of which five cheques were bounced time to time. He further deposed that as per policy of the company they also delivered TDRs (Trip Detail Reports) to the accused. He produced copies of TDRs and said that those are same which were delivered to accused. He further deposed that the TDRs produced before this court contains all the record of those consignments against which cheques were issued and accused has raised objection that his consignments were not delivered and the cheques were issued on condition that the cheques will be encashed after resolution of matter of delivery of certain consignments. The accused also admitted the business relation with NLC Company however regarding the liability of payment he

stated that he issued the cheques with condition mentioned on the back side of each cheque that after clearing the dispute of delivery of vehicles (number of vehicles whose delivery at destination is under dispute are mentioned on the back side of each cheque) the subject cheques will be encashed. After scanning the subject cheques it is apparent that on the back side of each cheque a condition is written that the cheques will be encashed when the matter of vehicles (numbers mentioned on the backside of cheques) will be resolved. Moreover, in the business of transport, transporter is duty bound for the safe delivery of goods and for any loss incurred during the transport he is responsible. But in instant case the complainant and PW Tahir Javed Khan who appeared on behalf of the NLC Company could not exonerate themselves from the liability of safe transportation and shift the liability upon accused for non-payment of the freight charges. PW Tahir Javed himself admitted by saying "it is mentioned in agreement entered with the accused that the consignment will be delivered within three days at the every longest destination." Further he also admitted that in one or two cases consignment was not delivered within a period of one month otherwise every consignment was delivered within time. He also stated that the company did compensate the accused in case of delay in delivery of consignment. From a careful scrutiny of the record of transportation i.e. TDRs it appears that the TDRs produced before the court are generated from computer record in year 2017 whereas the consignments were ordered in year 2012 to 2014. Most of the TDRs do not possess the signatures of the receiver of consignment and even the consignments received after a delay of more than one week. Now the liability of payment of freight charges would fall upon accused after resolving of conditions of matter regarding which conditional cheques were given. But prosecution has failed to bring on record any convincing evidence on this point.

Moreover, PW Tahir Javed Khan (Senior Manager Marketing in NLC Karachi) produced an agreement at Ex--4/D which was entered into between accused Khalid Bhatti and PW Tahir Javed on behalf of NLC Company regarding the payment of amount. Admittedly the agreement was concluded between parties on 31-08-2016 after dishonoring of Cheques are parties agreed on fresh terms and conditions of payment. Para number 4 of that agreement is relative which is reproduced as Under:

"And whereas after detail discussion between both the parties mutually consented, the first party (Accused) agreed to pay said amount Rs.47,98,270/- to second party (NLC Ltd) on monthly installment basis at the rate of Rs. 25000/- to Rs.100,000/- or whatever available higher than this will be paid."

Now when a subsequent agreement was entered into parties then it binding upon them. The complainant/ NLC Ltd agreed on the fresh terms of payment therefore, cheques early issued for same amount will not attract the penal consequences as same become infructuous after mutual agreement of the parties. In presence of above discussed discrepancies, this Court does not feel any hesitation to hold that the complainant has miserably failed to establish the obligation upon accused, so that in such situation the liability as fulfillment of an obligation as envisaged in the Section 489-F PPC is not proved and it is settled preposition of law that when liability does not exist, mere issuance of cheque does not constitute an offence within the parameters of Section 489-F PPC."

8. It is a well-settled principle of law that a criminal case is to be decided based on the totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-

examination or otherwise of a witness on a particular fact stated by him. A similar view had been expressed by the Honourable Supreme Court of Pakistan in the case of State v. Rab Nawaz and another (PLD 1974 SC 87) wherein Honourable Supreme Court has observed that a criminal case is to be decided based on the totality of circumstances and not based on a single element.

9. It is noteworthy that in the impugned judgment the learned trial Judge has pointed out some other material contradictions, which are sufficient to declare that the prosecution could not establish the case against the respondent/accused beyond reasonable doubt and where a single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused, then accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In this regard, reliance is placed on the cases of Tariq Pervaiz v. The State [1995 SCMR 1345] Muhammad Akram v. The State [2009 SCMR 230] and Lal Bux alias Lal v. the State (2023 YLR 321) (authored by Zulfiqar Ahmed Khan J.)

10. It is an important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, as presumption of double innocence is attached in the latter case. Reliance is placed on the case of 'Inayatullah Butt v. Muhammad Javed and 2 others' [PLD 2003 SC 562]. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the Court will not exercise jurisdiction under section 417, Cr.P.C.

11. It is well settled by now that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by the Supreme Court in the case of State v. Abdul Khaliq and others (PLD 2011 SC 554).

12. In these circumstances, I am of the opinion that the quality and standard of evidence is lacking, which is required to establish a criminal case for justifying conviction and sentence. Hence, I am of the view that the instant criminal acquittal appeal is not meritorious, as such, the same is **dismissed**.

JUDGE