

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS
CRIMINAL ACQUITTAL APPEAL No.S-20 of 2023

Appellant/ Complainant: Bharat Kumar s/o Sobhraj Mal
Through Haji Qalander Bux Laghari, Advocate.

Respondents/ accused: Sajid Hussain s/o Muhammad Hanif.
Through Mr. Ghulam Nabi Meo advocate.

The State: Through Mr. Ghulam Abbas Dalwani, DPG.

Date of hearing: 29.08.2025

Date of judgment: 29.08.2025

J U D G M E N T

Amjad Ali Sahito, J.- Through the captioned Criminal Acquittal Appeal, appellant Bharat Kumar has called in question Order dated 23-10-2023, passed by learned Civil Judge and J.M-III, Mirpurkhas, in Criminal Case No. 292/ 2022 Re. *The State v. Sajid Hussain Rajput* arising out of F.I.R No.157 of 2022 for offence under sections 420,506(ii),489-F PPC of PS Satellite Town, Mirpurkhas, whereby respondent/ accused Sajid Hussain Rajput has been acquitted under section 249-A Cr.P.C.

2. The facts of case as narrated in F.I.R by complainant Bharat Kumar at PS Town Mirpurkhas are that he purchased a plot admeasuring 3000 Sq. Ft from Sajid Hussain on 06.05.2021 in consideration of Rs.1,14,00000/- and agreement was made after payment of earnest money of Rs.24,00000/-. Then an amount of Rs.16,00000/- was also paid in presence of Ali Hassan and Abdul Rasheed Mari. But, thereafter it came to know that Sajid Hussain (accused) is not owner of said plot so he was asked to return the paid amount, therefore, he gave Cheque bearing Nos. 5472928 dated 09.05.2022 of Rs.2000000/-, 5472927 dated 10.09.2022 of Rs.1000000/- and 5472929 dated 05.10.2022 of Rs.1000000/- of account No. 1036008100507701-5 of Bank Al-Habib Khayaban-e-Hafiz Branch Karachi as surety to the complainant and thereafter same were presented by the complainant in his account in Habib Metropolitan Bank

Mirpurkhas Branch on 13.10.2022 and 19.10.2022 respectively but same were returned with memo of dishonor. Thereafter, complainant lodged instant FIR.

3. After completion of the usual investigation, the I.O submitted a police report under section 173 Cr.P.C before the trial court. After supplying copies of necessary documents charge was framed against the respondent No.1, to which he pleaded not guilty and claimed trial. At the stage of trial, appellant filed direct complaint No.03/ 2023 before the same court against the respondent No.1 in respect of same incident. After recording the statement of complainant and his witnesses, said direct complaint was dismissed vide order dated 17-03-2023. Thereafter, complainant and his witness Abdul Rasheed were examined and then learned trial court acquitted the respondent No.1 under section 249-A Cr.P.C through impugned Order, hence this Criminal Acquittal Appeal.

4. Learned counsel for the appellant/complainant has contended that impugned order is opposed to facts, law and material available on record; that impugned order is result of non-reading and misreading of the evidence available on record; that trial court has failed to consider the fact that without recording complete evidence of prosecution witnesses, it cannot be ascertained that there is no probability or possibility of conviction of the respondent/ accused; that sufficient material is available against the respondent/ accused in shape of oral and documentary evidence but same was not considered by learned trial Court; that without recording entire evidence of prosecution witnesses the disposal of the case and acquittal of the present/accused is miscarriage of justice. Lastly he prayed for setting aside impugned Order and remand of the matter to the trial court for deciding the same on merit.

5. On the other hand, learned counsel appearing for the respondent/accused and learned D.P.G have supported the impugned Order.

6. Heard, perused.

7. From the perusal of the record, it emerges that the applicant/complainant lodged FIR bearing Crime No.157/2023 for offences punishable under Sections 420, 506(ii), and 489-F, Pakistan Penal Code, 1860, at Police Station Satellite Town, Mirpurkhas, against respondent No.1/accused. During the pendency of the said case, the applicant/complainant also instituted a direct complaint against respondent No.1/accused in respect of the same incident. Upon recording the statement of the complainant, Bharat Kumar, under Section 200, Cr.P.C., and that of his witness under Section 202, Cr.P.C., the said direct complaint was dismissed.

8. The record further reveals that the applicant lodged FIR No.157/2023 on 10-11-2022, whereafter the Investigating Officer submitted the challan of the case on 03-12-2022. However, when the matter was fixed for recording of evidence, the appellant/complainant filed a direct complaint on 04-03-2023 on the ground that the FIR had not been registered strictly in accordance with his verbatim version. There is, however, nothing on record to demonstrate that the appellant/complainant ever preferred any application or complaint before the competent forum against the Station House Officer, Police Station Satellite Town, Mirpurkhas, alleging failure to record the FIR in exact conformity with his narration. Moreover, the direct complaint in respect of the same incident was filed after an unexplained delay of about two months and twenty-four days, and was dismissed upon recording the statement of the complainant under Section 200, Cr.P.C., and of his witness under Section 202, Cr.P.C. It is rather surprising that, while the appellant himself admitted in the direct complaint that FIR No.157/2023 was not registered as per his verbatim version, he nevertheless seeks to support the prosecution arising out of the said FIR during the trial.

9. Furthermore, in the FIR, the complainant alleged that he paid earnest money of Rs.24,00,000/- to respondent No.1 at the time of the agreement and subsequently paid an additional amount of Rs.16,00,000/- in the presence of witnesses Ali Hassan and Abdul Rasheed. However, during cross-examination, he admitted as correct that in his application No.542/2022, filed under Sections 22-A and 22-B, Cr.P.C., before the learned Sessions

Court, Mirpurkhas, on 20-04-2022, he had stated that he paid a total sum of Rs.30,00,000/- to the accused. He further conceded in cross-examination that neither Abdul Rasheed nor Ali Hassan were cited as witnesses in the said direct complaint. These glaring contradictions between the version set forth in the FIR and the testimony of the complainant, coupled with the filing of a direct complaint in respect of the same incident disowning the contents of FIR No.157/2023 of Police Station Satellite Town, Mirpurkhas, which direct complaint was dismissed after recording statements under Sections 200 and 202, Cr.P.C., are sufficient to conclude that there exists no reasonable probability of the conviction of the respondent/accused for the alleged offences.

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. It is well settled law that once the trial court records an acquittal, the accused earns presumption of double innocence, and the appellate court should not reverse such findings unless find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous or based on misreading or non-reading of evidence, as was held by the Supreme Court in the case of **State v. Abdul Khaliq and others (PLD 2011 SC 554)**.

11. The reasons given by the learned trial Court in its impugned order have not been found to be arbitrary, fanciful or capricious warranting interference by this Court. Hence instant Criminal Acquittal Appeal being devoid of merit is hereby dismissed.

JUDGE

Saleem

