

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 595 of 2019

Appellant : Islamuddin through Ms. Saima Shahreen
Abbasi, Advocate.

Respondent No.1 : Nemo

Respondent No.2 : The State through Mr. Muhammad Noonari,
D.P.G.

Date of hearing : 14.05.2026.

Date of order : 14.05.2026.

JUDGMENT

TASNEEM SULTANA J: - The appellant/complainant Islamuddin has called into question the judgment dated 03.09.2019 passed by the learned Civil Judge and Judicial Magistrate-VIII, Central Karachi, in Criminal Case No.659/2016, arising out of F.I.R. No.59 of 2016 registered at Police Station Liaquatabad, whereby the respondent/accused Muhammad Kashif was acquitted of the charge under Section 245(1), Cr.P.C.

2. Brief facts of the prosecution case are that complainant Islamuddin alleged that he used to do rice business and had given rice worth Rs.14,70,000/- to accused Kashif about five months earlier; that accused Kashif issued two cheques of NIB Bank bearing Nos.1548109688 and 1548109690, which were deposited in account and were bounced; that the complainant contacted the accused but to no avail; hence, the instant F.I.R. was registered.

3. After usual investigation, police submitted challan under Section 173, Cr.P.C. against the respondent/accused. During investigation, though the F.I.R. was initially registered under Section 489-F, P.P.C., the said provision was deleted, and the respondent/accused was sent up to face trial under Section 420, P.P.C. The requisite documents were supplied to the respondent/accused as required under Section 241-A, Cr.P.C. Thereafter, charge was framed against him, to which he pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined four witnesses. PW-1 complainant Islamuddin was examined at Ex.07 and produced F.I.R., memo of site inspection and memo of seizure as Ex.07/A to Ex.07/C. PW-2 ASI Jameel Tanoli was examined at Ex.08 and produced memo of arrest as Ex.08/A. PW-3 SIP Ahmed Nawaz was examined at Ex.11 and produced entry No.41 as Ex.11/A. PW-4 SIP Muhammad Barkat, Investigating Officer, was examined at

Ex.12 and produced station diary, application to bank, bank letter/report and stop-payment report as Ex.12/A to Ex.12/D. Thereafter, prosecution closed its side.

5. Statement of the respondent/accused under Section 342, Cr.P.C. was recorded, wherein he denied the allegations levelled against him and claimed innocence. He, however, did not examine himself on oath under Section 340(2), Cr.P.C. nor led any evidence in defence. The learned trial Court, after hearing learned counsel for the accused and learned ADPP for the State, acquitted the respondent/accused vide judgment dated 03.09.2019.

6. Learned counsel for the appellant contended that the learned trial Court failed to properly appreciate the evidence available on record; that the complainant had fully supported the prosecution case; that the respondent/accused had obtained rice from the complainant and thereafter failed to satisfy the liability; that the prosecution witnesses were consistent on material aspects; that minor discrepancies were given undue weight by the learned trial Court; that the prosecution evidence was sufficient to connect the respondent/accused with the commission of offence; and that the impugned judgment is based on misreading and non-reading of evidence. She prayed for setting aside the impugned acquittal judgment.

7. Conversely, learned D.P.G. supported the impugned judgment and submitted that the learned trial Court has properly appreciated the evidence available on record; that the prosecution/complainant failed to prove the alleged transaction/delivery of rice and dishonest inducement, therefore, acquittal calls for no interference.

8. Heard learned counsel for the appellant, learned D.P.G. and perused the material available on record.

9. Before advertng to the evidence, it would be appropriate to examine the nature and ingredients of Section 420, P.P.C. The offence under Section 420, P.P.C. is not attracted by every breach of promise, non-payment of price or failure to honour a commercial understanding. The provision is penal in nature, and its foundation lies in "cheating", as defined under Section 415, P.P.C. Thus, to bring a case within the mischief of Section 420, P.P.C., the prosecution must prove that the accused, by practicing deception, dishonestly or fraudulently induced the person deceived to deliver property, and that such dishonest intention existed at the time when the inducement was made. If the initial transaction is not shown to be tainted with deception, a subsequent failure to pay or satisfy liability may give rise to civil consequences, but would not, by itself, constitute the offence of cheating punishable under Section 420, P.P.C.

10. The complainant's case was that he used to do rice business and had supplied rice worth Rs.14,70,000/- to respondent/accused Kashif, but no invoice, receipt, delivery challan, account statement, stock register, business record or

any other document was produced to establish either the complainant's rice business or actual delivery of rice to the respondent/accused. Rather, in cross-examination, the complainant admitted that he had not produced any proof regarding his rice business or delivery of rice either before the police or before the Court. The alleged transaction was also lacking in material particulars, as no exact date, quantity, mode of delivery, transportation details or acknowledgment of receipt was brought on record, while PW-4/SIP Muhammad Barkat, Investigating Officer, admitted that neither in the F.I.R. nor in the statements under Section 161, Cr.P.C. was any date of supply mentioned.

11. The complainant also improved his version by stating in Court that eight cheques were issued, whereas the F.I.R. was based only upon two cheques and the remaining cheques were neither mentioned in the F.I.R. nor produced before the police or the Court. PW-4 further admitted that the cheques were not in the name/account of respondent/accused Kashif and were not dishonoured due to insufficiency of funds; rather, payment was stopped by the account holder. No independent evidence was produced to connect the respondent/accused with the account holder, the alleged cheques or the alleged rice transaction. The evidence of PW-2 and PW-3 was confined to arrest, while no bank official or independent witness of purchase, delivery or receipt of rice was examined. The unexplained delay in lodging the F.I.R., from 26.11.2015 to 21.03.2016, further strengthened the doubts already emerging from the record. In the absence of proof of the foundational transaction, actual delivery of property and dishonest inducement from the inception could not safely be inferred.

12. The learned trial Court, after examining the evidence, reached the conclusion that the prosecution case was doubtful. Such conclusion is supported by the record, particularly in view of the failure of the prosecution to establish the alleged rice transaction, actual delivery of property, exact liability and dishonest intention at the inception. The findings recorded by the learned trial Court, therefore, cannot be termed perverse, arbitrary, artificial or shocking.

13 .The scope of interference in an appeal against acquittal is narrow, as an accused, after acquittal, earns double presumption of innocence. The Hon'ble Supreme Court of Pakistan in **Muhammad Riaz versus Khurram Shehzad and another (2024 SCMR 51)** has held as under:—

“10. It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly.”

14. In State versus **Abdul Khaliq and others (PLD 2011 SC 554)**, the Hon'ble Supreme Court has further held as under: —

"From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced 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. It has been categorically held in a plethora of judgments that 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. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal 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. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals."

15. In the present case, learned counsel for the appellant could not point out any patent misreading or non-reading of material evidence, perversity, arbitrariness or material illegality in the impugned judgment. The learned trial Court considered the prosecution evidence and assigned reasons for extending benefit of doubt to the respondent/accused. The view taken by the learned trial Court appears to be a possible and plausible view of the evidence available on record. Even if another view may be possible, that by itself would not furnish a lawful basis to interfere in an appeal against acquittal.

16. For the foregoing reasons, the instant Criminal Acquittal Appeal is dismissed and judgment dated 03.09.2019 passed by the learned Civil Judge and Judicial Magistrate-VIII, Central Karachi, in Criminal Case No.659 of 2016, whereby respondent/accused Muhammad Kashif was acquitted under Section 245(1), Cr.P.C., is maintained. These are the reasons for the short order dated 14.04.2026.

JUDGE