

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.**
Cr.Acq.Appeal No.S- 124 of 2019

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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1. For orders on MA 6640/19
2. For orders on MA 6641/19
3. For hearing of main case.

19.09.2019.

Mr. Ahsan Gul Dahri, advocate for appellant
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1. Urgency granted.
2. Exemption granted.
3. The appellant / complainant by way of instant acquittal appeal has impugned judgment dated 10.07.2019 passed by learned Ist Civil Judge & Judicial Magistrate, Daulatpur whereby he has acquitted the private respondent of the offence punishable under Section 489-F PPC.

The allegation against the private respondent is that he dishonestly issued a cheque in favour of the appellant / complainant, same was bounced when was presented before the concerned Bank for encashment for that he was booked and reported upon.

At trial the private respondent did not plead guilty to the charge and prosecution to prove it examined appellant / complainant and his witnesses and then closed the side.

The private respondent in his statement recorded under Section 342 Cr.P.C denied the prosecution allegation by pleading innocence. He did not examine himself on oath or anyone in his defence.

On evaluation of evidence so produced by the prosecution the private respondent was acquitted of the offence for which he was charged by the learned trial Magistrate by way of impugned judgment.

It is contended by learned counsel for the appellant / complainant that learned trial Magistrate has recorded acquittal of the private respondents on the basis of improper assessment of evidence. By contending so he sought for adequate action against the private respondent.

I have considered the above arguments and perused the record.

The FIR of the incident has been lodged with the delay of about fourteen days; such delay could not be lost sight of. Learned trial court has recorded very cogent reason for acquittal of the private respondent which reads as under:-

“Complainant and PWs are not consistent on various material points, the complainant has changed facts of the story in deposition and cross examination, all these infirmities on the part of prosecution witnesses have made the whole episode doubtful. Moreover, it transpires from the facts and evidence of the case that the cheque was handed over to the nekmards as guarantee for performance of the conditions of faisla and no dishonesty is observed at the hands of the accused.”

In case of **State & ors vs. Abdul Khaliq & ors (PLD 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”.

Nothing has been brought on record, which may suggest that the private respondent has been acquitted by trial Court in arbitrary or cursory manner, which may justify this Court to make

interfere with the acquittal of the private respondent, by way of instant Cr. Acquittal Appeal. It is dismissed in limine.

JUDGE

Ahmed/Pa