

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.**

Cr.Acq.Appeal No.S- 15 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.

22.11.2019.

Appellant/complainant in person.
Mr. Shahzado Saleem Nahiyoon, D.P.G for the State.
Mr. Muhammad Amair Qureshi, advocate for
respondent Moula Bux.
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The appellant / complainant by way of instant acquittal appeal has impugned judgment dated 24.01.2015 passed by learned 2nd Civil Judge & Judicial Magistrate, Tando Allahyar, whereby the private respondents have been acquitted of the offence for which they were charged.

2. The allegation against the private respondents is that they in furtherance of their common intention obtained the loan from the appellant / complainant and as a token of its return they issued a cheque in favour of appellant / complainant dishonestly. It was bounced by the concerned Bank when was presented there, for encashment, for that they were booked and reported upon.

3. At trial, the private respondents did not plead guilty to the charge and prosecution to prove it examined appellant / complainant and her witnesses and then closed the side.

4. The private respondents in their statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence, they did not examine anyone in their defence or themselves on oath to disprove the charge.

5. On evaluation of evidence, so produced by the prosecution learned trial Court acquitted the private respondents, such acquittal is impugned by the appellant / complainant before this Court by way of instant Acquittal Appeal, as stated above.

6. It is contended by appellant / complainant that learned trial Magistrate has recorded acquittal of the private respondents on the basis of conjecture and surmises without considering the evidence on record. By contending so, she sought for adequate action against the private respondents.

7. Learned D.P.G for the State and learned counsel for respondent Moula Bux by supporting the impugned judgment have sought for dismissal of the instant appeal.

8. I have considered the above arguments and perused the record.

9. The FIR of the incident has been lodged with delay of about eight months that too after having recourse u/s 22-A and B Cr.P.C through learned Sessions Judge/Ex-officio Justice of Peace, Tando Allahyar, such delay could not be lost sight of. Noor Muhammad (respondent No.2) who allegedly issued cheque in favour of appellant / complainant has died and with his death the instant

acquittal appeal in his respect has come to an end (abated). The civil litigation between the parties is said to be going on. In these circumstances, learned trial Magistrate was right to record acquittal of the private respondents by extending them benefit of doubt.

10. In case of ***State and others vs. Abdul Khaliq and others (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”.

11. Nothing has been brought on record, which may suggest that the private respondents have been acquitted by trial Court in arbitrary or cursory manner, which may justify this Court to make interfere with the acquittal of the private respondents.

12. Consequent upon above discussion, the instant Acquittal Appeal is dismissed.

JUDGE