

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Acquittal Appeal No.S- 243 of 2019

1.For orders on office objection.

2.For hearing of Main Case

Mr. Muhammad Nasir Malik Advocate for the Appellant/Complainant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of Hearing: **23-04-2021**

Date of Judgment: **23-04-2021**

J U D G M E N T

AFTAB AHMED GORAR J. Respondent / accused Muhammad Nasir was tried by learned 1st Civil Judge & Judicial Magistrate (MCTC), Mirpur Mathelo in Criminal Case No. 117 of 2019, arising out of Crime No. 69 of 2019, registered at P.S, Mirpur Mathelo, under Sections 489-F & 504 PPC.

2. The charge against the respondent / accused is that in the month of January, 2019, he dishonestly issued a cheque to be drawn from ABL, Bank Mirpur Mathelo branch to the complainant under an obligation for a sum of Rs. 800,000/- dated 14.03.2019 which was dis-honoured on presentation in the bank and used abusive language when complainant approached the accused for payment. Consequently, above FIR was lodged on 28.05.2019.

3. Charge was framed against accused, to which he pleaded 'not guilty' and claimed to be tried. Thereafter, prosecution led the evidence of prosecution witnesses and statement of accused / respondent was

recorded in terms of Section 342 Cr.P.C and then on the assessment of evidence available on record and hearing the learned counsel for the parties, learned trial Court acquitted the accused / respondent vide impugned judgment dated 18.11.2019.

4. The appellant/complainant being dissatisfied with the acquittal of the accused has filed this Crl. Acquittal Appeal.

5. Learned counsel for the appellant/complainant argued that there was sufficient evidence connecting the private respondent with the commission of offence, but the learned trial Court illegally acquitted him of the charge; that respondent failed to create any dent in the prosecution case but even then the trial Court illegally, unlawfully and without any justifiable reason acquitted him of the charge and while acquitting the respondent, the trial Court has failed to record any cogent reason.

6. On the other hand, learned Additional P.G supported the impugned judgment by arguing that sufficient material was available on record creating reasonable shadow of doubt and by giving him such benefit, respondent / accused has been rightly acquitted by learned trial Court.

7. Heard learned counsel for the appellant, learned Additional P.G for the State so also with their assistance scanned the entire material available on record and I have reached to a conclusion that the

respondent / accused has rightly been acquitted by the learned trial Court for the reasons that the evidence of the complainant is not corroborated by the evidence of his witnesses, namely, Shahid Aziz. In his evidence, complainant deposed that for purchase of plot, accused borrowed money from him and he gave the money in presence of PWs, but this version of complainant is not supported by the evidence of his witness Shahid Aziz, who clearly deposed that he did not know the reason accused told to complainant. Said PW has also deposed that complainant and accused exchanged harsh words, but this version of PW is also not corroborated by the version of complainant, recorded in the FIR. Furthermore, in his evidence complainant deposed that accused issued cheque with black pen, but put his signature with blue pen, however, when said cheque was examined by learned trial Court, it was found filled with blue pen so also signed with blue pen. Moreover, it is a matter of record that complainant has failed to keep any account or documentary proof of dues against the accused so also he has not cited any witness to the transaction, which involved financial obligation, as such it has rightly been observed by learned trial Court that complainant has failed to prove the liability against the accused on account of the above transaction. As such, from a cumulative assessment of the evidence being not corroboratory, the learned trial Court determined that the prosecution had failed to prove the charge against the accused, hence by extending him the benefit of doubt, the accused was acquitted.

8. It is settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. These powers must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.

9. In the judgment in the case of *Zulfiqar Ali v. Imtiaz and others* (**2019 SCMR 1315**), Hon'ble Supreme Court has held as under:

“2. According to the autopsy report, deceased was brought dead through a police constable and there is nothing on the record to even obliquely suggest witnesses’ presence in the hospital; there is no medico legal report to postulate hypothesis of arrival in the hospital in injured condition. The witnesses claimed to have come across the deceased and the assailants per chance while they were on way to Chak No.504/GB. There is a reference to M/s Zahoor Ahmed and Ali Sher, strangers to the accused as well as the witnesses, who had first seen the deceased lying critically injured at the canal bank and it is on the record that they escorted the deceased to the hospital. Ali Sher was cited as a witness, however, given up by the complainant. These aspects of the case conjointly lead the learned Judge-in-Chamber to view the occurrence as being un-witnessed so as to extend benefit of the doubt consequent thereupon. View taken by the learned Judge is a possible view, structured in evidence available on the record and as such not open to any legitimate exception. It is by now well-settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, the impugned view is found on the fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled. Criminal Appeal fails. Appeal dismissed.”

10. When called upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned judgment, learned counsel for the appellant was found wanting and could not point out any such error or omission. View taken by the learned trial Court is a possible view, structured in evidence available on record and as such not open to any legitimate exception. It is by now well settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

11. For the aforesaid reasons, this CrI. Acquittal Appeal being devoid of any merit stands ***dismissed*** accordingly.

J U D G E

Ahmad