

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

### Criminal Acquittal Appeal No. S – 120 of 2017

Appellant/Complainant : Nand Lal alias Raja  
through Mr. Shabbir Ali Bozdar Advocate

Private respondent : Amrat Lal and Dina Raam through  
Mr. Asif Amanullah Advocate

The State through Mr. Aftab Ahmed Shar,  
Additional Prosecutor General

Date of hearing : 22.11.2019

Date of decision : 22.11.2019

### **JUDGMENT**

**AFTAB AHMED GORAR, J.-** By filing instant Criminal Acquittal Appeal, the appellant/complainant has impugned judgment dated 09.06.2017, passed by learned Civil Judge and Judicial Magistrate (Family Court) Ghotki, whereby the private respondents have been acquitted of the offence under Sections 489-F and 506/2 PPC arising out of Crime No.239 of 2014 registered at Police Station 'A' Section Ghotki.

2. The facts in brief necessary for disposal of instant criminal acquittal appeal are that there was business relations in between the complainant and the private respondents and sometimes prior to registration of the FIR the said business relations were dissolved between them, as such the private respondent No.1 paid some amount in cash whereas for remaining outstanding share of the appellant he issued a cheque No.00013814 of his Account No.00007116500500860

of Askari Bank Ghotki dated 26.8.2014 for an amount of Rs.90,00,000-00 and on presentation, the same was dishonoured and such memo was affixed thereon by the concerned Bank Manager. It is further alleged that the appellant/complainant accompanied his brother-in-law Jagi Ram and relative Bhagwandas approached the private respondents and apprised them of the fact, but the private respondents along with two unknown persons present there became angry and pointed pistols and threatened him not to demand the outstanding dues and issued threats of dire-consequences, hence such FIR was lodged with Police, the private respondents on due investigation were challaned by the police to face their trial before Court of Civil Judge and Judicial Magistrate (Family Court) Ghotki for the aforesaid offence.

3. At trial, the private respondents did not plead guilty to the charge and prosecution to prove it, examined the PW-1 complainant Nand Lal alias Raja at (Ex.3), who produced original cheque along with its return memo and FIR; PW-2 Jagdesh Kumar at (Ex.4); PW-3 mashir / Suneel Kumar at (Ex.5) who produced mashirnama of place of incident, however, the first mashir was given up; PW-4 ASI Pir Bux at (Ex.7) and then closed the side.

4. The private respondents in their statement recorded u/s 342 Cr.P C denied the prosecutions' allegation by pleading innocence. The private respondent Amrat Lal has stated that neither he has issued such

cheque to the complainant, whereas, complainant was servant of his father and after his death the complainant started working with him on monthly salary as Accountant / Manager, he was incharge of cheque and balance of private respondents' Mill. He has produced copy of Suit No.30/2016 pending adjudication filed by appellant/complainant. The private respondent Dina Ram also denied the allegations. The Bank Manager summoned by the Court, but was not examined by the defence counsel, whereas, on the application u/s 540 Cr.P.C the Bank Manager was examined as PW-5.

5. On conclusion of the trial, the learned trial Court acquitted the private respondents vide judgment dated 09.6.2017 which is impugned by the appellant/complainant before this Court by way of instant Criminal Acquittal Appeal U/s 417(2)-A Cr.P.C.

6. It is contended by learned counsel of the appellant/complainant that the prosecution has been able to prove its case against the private respondents beyond shadow of doubt by producing cogent evidence which has not been considered by learned trial Court in its true prospect without lawful justification; that the appellant/complainant was the business partner of the private respondents and on dissolution of such partnership the private respondent No.1 paid some amount in cash, whereas, for the remaining outstanding amount, the private respondent No.1 issued such cheque of his own account, which on

presentation in the concerned Bank was dis-honoured; that the Suit filed by the present appellant/complainant is pending adjudication and in the written statement the private respondent Ambrat Lal has not denied the issuance of such cheque; that there is strong circumstantial as well as documentary evidence available for awarding conviction to the private respondents, but the learned trial Court has not considered such material aspects of the case thus has acquitted the private respondents on the sole reason that the account was photo account; that the Bank Manager was examined who has also supported the version of the appellant/complainant. He lastly contended that adequate action against the private respondents may be taken.

7. Learned counsel appearing for the private respondents as well as learned Additional PG for the State by supporting the impugned judgment have sought for dismissal of the instant criminal acquittal appeal by contending that no such partnership deed has not been placed on record by the appellant/complainant either during investigation or at the trial; that the appellant/complainant was servant of the private respondent No.1 and he was drawing salary for running his house; that there is no such agreement with regard to the business partnership of the appellant/complainant and private respondents; that the PW Jagdesh Kumar is the brother-in-law of the appellant/complainant, whereas, PW Bhagwan Das is related to them, hence they all are highly interest and setup witnesses, their evidence

requires corroboration from independent source, which is lacking in the present case; that there is civil litigation pending adjudication in between the parties.

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

9. Admittedly, both the parties were having a business transaction and the dispute, if any, between them was relating to settlement of accounts and such Summary Suit No. 09 of 2015 (Re-Nand Lal alias Raja v. Ambrat Lal) filed by the appellant/complainant, was pending adjudication before the Court of learned 2<sup>nd</sup> Additional District Judge Ghotki. The private respondent No.1 Amrat Lal also filed Suit No.30 of 2016 for Recovery against the present appellant/complainant, as he transferred some amount illegally in the account of one Darshan S/o Ramesh Lal in his bank Account maintained in HBL Branch Ghotki, which was also pending, therefore, it transpires that the appellant/complainant has tried to convert the civil litigation into criminal litigation with the sole object to settle the account of enmity with the private respondents. Furthermore, no original cheque, which was allegedly bounced, was secured by the police during the course of investigation, but later it was produced by the appellant/complainant in his evidence, hence the production of the cheque at later stage at the time of evidence creates serious doubt that it may have been arranged by the appellant / complainant. This was extremely fatal to the

prosecution case. No such partnership deed has been produced by the complainant either during the investigation or at the time of recording his evidence, hence mere version of the appellant/complainant cannot be believed as trustworthy and confidence inspiring. The prosecution witnesses namely Jagdesh Kumar and Bhagwandas are the only eyewitnesses of the alleged incident when the appellant/complainant approached the private respondents after the dishonor of the cheque. The private respondent Ambrat Lal is illiterate person, but the cheque which he allegedly issued in favour of the appellant / complainant showing his signature in Sindhi writing, whereas, the particulars filled in the cheque are in English. In such circumstances, learned trial Court has rightly acquitted the private respondents by extending them benefit of doubt.

10. In case of **State and others vs. Abdul Khaliq and others (P L D 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. In view of the facts and reasons discussed above, instant Criminal Acquittal Appeal fails and it is dismissed accordingly.

Judge