

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No. S – 52 of 2020

Appellant/Complainant : Syed Sajjad Ali Shah
through Mr. Abdul Mujeeb Shaikh Advocate

Private respondent : Safdar Hussain Junejo present in person

The State through Mr. Khalil Ahmed Maitlo,
Deputy Prosecutor General

Date of hearing : 08.03.2021

Date of decision : 08.03.2021

JUDGMENT

AFTAB AHMED GORAR, J.- By filing instant Criminal Acquittal Appeal, the appellant/complainant has impugned judgment dated 12.03.2020, passed by learned 1st Civil Judge and Judicial Magistrate (MCTC), Mirpur Mathelo, whereby the private respondent has been acquitted of the offence under Sections 489-F PPC arising out of Crime No.271 of 2019 registered at Police Station 'A' Section Ghotki.

2. The facts in brief necessary for disposal of instant criminal acquittal appeal are that the private respondent and his brother Aftab sold-out one house in Deh Odharwali to the appellant for total consideration of Rs.35,00,000/- whereas, an amount of Rs.19,00,000/- was paid to the private respondent for the said transaction. The appellant/complainant on the next date came to know that the said house is not in the name of the private respondent, therefore, he

demanded back the paid amount, hence the private respondent issued one cheque amounting to Rs.15,00,000.00, which was dishonoured on presentation by the concerned Bank. Thereafter, the appellant/complainant approached the private respondent and apprised him of the fact of dishonouring of the cheque and asked him for payment, who refused flatly, hence the appellant/complainant went to police station and lodged the FIR. The private respondent after usual investigation was challaned by the police to face his trial before the concerned Court of Law.

3. At trial, the private respondent did not plead guilty to the charge and prosecution to prove it, examined the PW-1 complainant Syed Sajjad Ali Shah at (Ex.3), who produced order of Ex-Officio Justice of Peace, FIR, Cheque No.26913613, its return memo at Ex.3/A to 3/D respectively; PW-2 Muhammad Ayub at (Ex.4), who produced memo of place of incident; PW-3 Syed Miqdad Ali Shah at (Ex.5) who produced nothing but certified the memo to be same and his signature as well; PW-4 Investigating Officer / ASI Zulfiqar Ali at (Ex.6), who produced memo of arrest, letter of SHO sent to Sindh Bank at (Ex.6/A and 6/B) respectively; PW-5 Rashid Ali Bullo, Operation Manger, Sindh Bank Branch, Ghotki at (Ex.7) who produced computer generated statement of account of accused having account title Safdar Hussain and one photocopy of same return memo on which verification of return memo

was done at (Ex.7/A and 7/B) respectively. Thereafter the learned ADPP closed the side of prosecution at (Ex.8).

4. The private respondent in his statement recorded u/s 342 Cr.P C denied the prosecutions' allegation by pleading innocence. The private respondent stated that the appellant/complainant wants to implicate him in false criminal case. He neither examined himself on oath nor led any evidence in his defence.

5. On conclusion of the trial, the learned trial Court acquitted the private respondent vide judgment dated 12.03.2020 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 had paid a huge amount of Rs.19,00,000.00 in lieu of the transaction of house in between him and the private respondent and his brother; that the private respondent issued such cheque of his own account for repayment of the cash amount received by him, which on presentation in the concerned Bank was dis-honoured;; 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 respondent on the sole reason that there are material contradictions in the evidence of the prosecution witnesses. He lastly contended that adequate action against the private respondent may be taken.

7. Learned Deputy Prosecutor General for the State assisted by private respondent supported the impugned judgment and sought for dismissal of the instant criminal acquittal appeal by contending that no such transaction was executed between the appellant/complainant and the private respondent nor such payment was made by the appellant/complainant to the private respondent, whereas, the cheque was managed by the appellant/complainant just to blackmail the private respondent, as the appellant/complainant on the pretext of encashing the pensionary benefits of his father has got the cheque from the private respondent and just to usurp the pensionary benefits of the father of private respondent has concocted this false criminal case.

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

9. Admittedly, there is inordinate and unexplained delay of one month in lodgment of the FIR, such delay could not be overruled. In case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, it was observed by the Hon'ble Apex Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

10. Further it is alleged that the appellant/complainant had purchased the house from the private respondent and his brother Aftab for total consideration of Rs.35,00,000.00 and he has paid an amount of Rs.19,00,000.00 to the private respondent for the said transaction, but the appellant/complainant has not given the proper date, time and place of execution of such sale transaction or payment of the earnest money to the private respondent. The appellant/complainant has further stated in his evidence that he on the next date when came to know that there is no house existing in Odherwali of the private respondent, therefore, he immediately demanded the return of his earnest paid money, for which the alleged cheque was issued by the private respondent to him. It is very hard to believe that the appellant/complainant without noticing the location and existence of the property has entered into transaction with the private respondent and paid a huge amount of Rs.19,00,000.00 as earnest money, for which the private respondent has issued the alleged cheque to him. 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. Since no such receipt or agreement has been produced by the appellant/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. In such circumstances, learned trial Court has rightly acquitted the private respondent by extending him the benefit of doubt.

11. 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”.

12. In view of the above, no such irregularity or infirmity is found in the impugned judgment dated 12.03.2020 passed by learned 1st Civil Judge and Judicial Magistrate (MCTC) Mirpur Mathelo calling for interference by this Court hence the instant criminal acquittal appeal fails and it is dismissed accordingly.

Judge