

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No. S – 106 of 2020

Appellant/Complainant : Janib Ali Rind
through Mr. Shah Mardan Rind Advocate

The State through Mrs. Shabana Naheed,
Assistant Prosecutor General

Date of hearing : 09.03.2021

Date of decision : 09.03.2021

JUDGMENT

AFTAB AHMED GORAR, J.- By filing instant Criminal Acquittal Appeal, the appellant/complainant has impugned judgment dated 24.11.2020, passed by learned 2nd Civil Judge and Judicial Magistrate, Kotdiji, whereby the private respondent has been acquitted of the offence under Sections 489-F and 406 PPC arising out of Crime No.94 of 2019 registered at Police Station, Kotdiji.

2. The facts of the prosecution case, briefly stated are that on 08.08.2019 the complainant Janib Ali Rind lodged the FIR at Police Station Kotdiji, stating therein that in the year 2015 the private respondent Abdul Rauf Khokhar came to him and showed his intention for sell his shop situated in Khairpur, which was purchased by the appellant/complainant in presence of witnesses namely Zamir Hussain and Abdul Latif Rind for total consideration of Rs.1000000.00 and paid him the earnest money of Rupees one lac cash whereas, three cheques

of equal amount of Rs.1,40,000.00 each, were also issued to the private respondent by the appellant, which were later on encashed by the private respondent and it was settled that within two months the private respondent would execute registered sale deed in favour of the appellant/complainant and the balance amount would be paid to the private respondent by the appellant/complainant, but the private respondent despite repeated approaches did not perform his part and was avoiding. It is alleged that on 15.5.2019 the private respondent Abdul Rauf came to the otaq of appellant/complainant and issued a cheque No.2654505 dated 10.06.2019 of Habib Bank Limited Shah Abdul Latif University Branch Khairpur for an amount of Rs.500000.00 in presence of the above named witnesses which was bounced 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 for lodging his FIR, which was not lodged thereafter, the appellant/complainant approached the Court of Ex-Officio Justice of Peace and obtained the order for registration of FIR, hence the FIR was lodged. 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 Janib Ali

at (Ex.4), who produced order of Ex-Officio Justice of Peace and FIR at (Ex.4/A & 4/B) respectively; PW-2 Abdul Latif at (Ex.5), who produced mashirnama of site inspection at (Ex.5/A); PW-3 Investigating Officer Akhtiar Hussain at (Ex.6), who produced cheque, memo, departure and arrival entries at (Ex.6/A to 6/D. Thereafter the side of the prosecution was closed vide statement at (Ex.7).

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 24.11.2020 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; that the appellant/complainant had paid a huge amount of Rs.10,00,0000.00 in lieu of the transaction of shop in between him and the private respondent; 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 respondent, 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 prayed for setting-aside the impugned judgment and taking adequate action against the private respondent.

7. Learned Assistant Prosecutor General for the State 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; that there was inordinate and unexplained delay of 60 days in lodgment of the FIR.

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

9. Admittedly, there is inordinate and unexplained delay of 60 days 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. The appellant/complainant in his evidence has deposed that he had purchased a shop from the private respondent by way of verbal agreement for which he has paid Rs.500000.00 to private respondent as earnest money, whereas, the remaining amount was liable to be paid at the time of execution of final sale deed. It is very hard to believe that how the appellant/complainant has paid a huge amount to the private respondent without ascertaining the existence, measurement as well as ownership of the property under sale. Since no such agreement has been produced allegedly executed between the appellant/complainant and the private respondent regarding the shop, 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 24.11.2020 passed by learned 2nd Civil Judge and Judicial Magistrate, Kotdiji calling for interference by this Court hence the instant criminal acquittal appeal fails and it is dismissed accordingly.

Judge