

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Acq. Appeal No.S-174 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

14.10.2022

Mr. Saddam Hussain Khaskheli, advocate for the appellant

ADNAN-UL-KARIM MEMON, J.- Through the captioned Acquittal Appeal, appellant/complainant has called in question the judgment dated 06.08.2022, passed by learned Civil Judge and Judicial Magistrate-I/ Model Trial Magistrate-II, Hyderabad in Criminal Case No. 668 / 2022 (*Re: The State versus Uzair Khan*), whereby, private respondent was acquitted under section 245 (i) Cr.P.C.

2. Mr. Saddam Hussain Khaskheli, learned counsel representing the appellant submits that the impugned order is not sustainable under the law as there was sufficient evidence available on record against the private respondent in terms of Section 489 –F PPC, but the trial Court brushed aside the same, more particularly, the private respondent was acquitted of the charge, without assigning any valid reason; that the private respondent obtained an amount of Rs. 12600000/- for business purpose from appellant in lieu of Cheque No. 00084793 amounting to Rs. 750,000/- which was presented in the concerned Bank, however the same was dishonored. Thus there was prima facie evidence against the respondent which was not considered; therefore, the impugned decision is nullity in the eyes of law. Learned Counsel also referred the deposition of Toufeeque Ahmed Operation Manager, Bank Islamic, Autobahn Branch, Hyderabad, and submitted that on account of closure of account of private respondent the cheque was returned with such endorsement. Per learned counsel from the above inference it was quite clear that there was sufficient evidence produced before the trial Court however the same was discarded. Learned Counsel referred to the grounds agitated by him in the memo of Appeal and submitted that the judgment of acquittal passed by the trial court is speculative and artificial based on misinterpretation and nonreading of evidence and thus liable to interference in terms of Section 417 Cr. PC. He prayed for allowing the instant appeal.

3. I have heard learned Counsel for the Appellant and perused the record with his assistance.

4. The deposition of Appellant shows that no date was mentioned when the said cheque was issued and the record is also silent that in whose presence the cheque was delivered besides there is no business transaction between the parties. The decision of the Trial Court suggests that the matter is heard and decided based on evidence for which the Complainant / appellant failed to prove any obligation / relationship between the parties and even he failed to prove issuance of cheque with dishonest intention.

5. The finding of learned trial court explicitly shows the following factual position of the case:

“The prosecution had to prove the transaction which allegedly took place between complainant and accused as also to prove whether accused has issued said cheque to the complainant with dishonest intention or not. However, the prosecution has failed to prove any obligation/relationship between the accused and complainant and has miserably failed to prove that accused has said the cheque which was his dishonest intention. The court of the Criminal side is not deciding the civil rights and liabilities of the parties involved as it is the job of the Civil Court which is seized with such like matter. The standard of proof in Civil and criminal cases is different. In a civil case, the court has to see only the probability of truth whereas, in Criminal proceedings, the prosecution has to prove whereas in criminal proceedings, the prosecution has to prove the alleged offense beyond any reasonable doubt and if there is any doubt, the accused shall be entitled to it not as a matter of grace or concession but as a right. The complainant is at liberty to avail remedy before the Civil court. No reliable evidence was led by the complainant to show the business transaction which created a lien of amounts mentioned in the cheque to justify the issuance of the cheque and in absence of proof of such transaction or justification, the accused could hardly be held to pay such dues.”

6. There cannot be any cavil with the legal proposition that an acquittal appeal stands on different footing than an appeal against the conviction. In acquittal appeals, the superior Courts generally do not interfere unless they find that a miscarriage of justice has taken place. The factum that there can be a contrary view on re-appraisal of evidence by the Court hearing the acquittal appeal simpliciter would not be sufficient to interfere with the acquittal judgment.

7. Basically, the scope of interference in an appeal against acquittal is narrow and limited for the reason that in 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 presumption of innocence is doubled. As per the dicta laid down by Honorable Supreme Court, it has been categorically held that such judgment should not interfere unless the findings are pervasive, arbitrary, foolish, artificial, speculative, and ridiculous, which is not the case at hand. On the aforesaid proposition I am guided by the decision of Honourable Supreme Court in the cases of *The State through Advocate General,*

Sindh v. Bashir and others (PLD 1997 SC 408) and *Khan v. Sajjad and two others* (2004 SCMR 215).

8. In the instant case, I do not find any illegality or irregularity committed by the trial Court, while passing the impugned order, which does not call for any interference by this Court.

9. In view of the facts and reasons discussed above, I find no merit in the present case resulting in miscarriage of justice while recording acquittal of respondent by the trial court. Resultantly, the instant appeal merits no consideration, and is accordingly dismissed in limine along with pending applications.

Karar Hussain/PS*

JUDGE