IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Acq. Appeal No. S-155 of 2022

Appellant	:	Hidayatullah Lanjar, through Ubedullah Malano, Advocate.
Respondent No.1	:	The State, through Imran Mobeen Khan, APG.
Respondent No.2	:	Nemo.
Date of hearing	:	13.11.2023

JUDGMENT

YOUSUF ALI SAYEED, J. – The Appellant, who is the complainant of Crime No. 78 of 2018 registered at Police Station Rohri under Section 489-F PPC (the "**FIR**"), has preferred the captioned Appeal under Section 417 (2-A) Cr. P.C., impugning the Judgment entered by the learned Civil Judge & Judicial Magistrate-III (MCTC), Sukkur on 19.10.2022 in the ensuing Criminal Case, bearing No. 248 of 2019, resulting in the acquittal of the Respondents No. 2, Badaruddin.

2. Succinctly stated, the FIR was registered by the Complainant on 29.04.2019 alleging that a Cheque dated 20.12.2018, bearing No. 04550495, in the sum of Rs.3,800,000/-, had been drawn in his favour by the Respondent No. 2 on Account No. 0112087901002261 maintained by the latter at the Rohri Branch of UBL Bank, in the context of a property transaction, which was deposited by the Complainant in his account but was dishonored due to there being insufficient funds in the account in question.

3. Upon the case proceeding, the Respondent No.2 entered a plea of not guilty in response to the charge and claimed trial, during the course of which the prosecution proceeded to call several witnesses who produced various documents, with the matter culminating at first instance in a conviction recorded against the Respondent No.2 in terms of a Judgment dated 11.11.2021, which was then set aside on appeal with it being observed in the Appellate Judgment dated 30.06.2022 that one of the witnesses produced by the prosecution had been allowed to depose without his name having even been mentioned in the list of witnesses and without any application having then been filed under Section 540 Cr.PC, and that the recording of the Statement of the Respondent No.2 under S.342 Cr.PC also suffered from error. The matter was thus remanded with directions being issued for addressing those aspects, with the determination that then took place afresh following compliance on those scores culminating in the acquittal of the Respondent No.2 vide the impugned Judgment.

4. A perusal of the impugned Judgment reflects that from a cumulative assessment of the evidence, the learned trial Court determined that the prosecution had failed to establish the elements of the offence and prove the charge against the Respondent No.2 beyond a reasonable doubt, with it being observed *inter alia* that:

> "It is the duty of prosecution to brought unimpeachable evidence for holding conviction of accused. In this regard, it is admitted position on part of prosecution: witnesses that no such sale agreement, Survey Number/Plot Number, proper location, any mutation document as well as any proof with respect to handing over the possession to accused is brought on record. It is also admitted position that complainant party has not produced any proof regarding possession of alleged plot and later on selling the same to present accused. It is also matter of record that complainant party failed to produce any proof with respect to any business of plotting as well as in this regard failed to produce

any record of his shop / office where complainant is being working as property dealer. It has also come on record that during investigation, IO of the case failed to visit cited place where alleged plot is located as deposed by complainant. IO failed to produce any proper sketch or revenue record of plot from which it may appears that same was purchased by accused from complainant and plot is still under the possession of accused. Today, complainant of present case appeared and stated that he had purchased plot from other party and sold out the same to accused and accused also sold out the plot to other party. Complainant has not deposed such contention during his evidence as well as he failed to produce any witness from whom he had purchased and selling out of plot by accused to other party. It has also seems to be hardly believable that complainant being seasonal property dealer as deposed by him but he had sold out plot without receiving even token money on the basis of post-dated cheque as well as he handed over the possession of plot on same date but he failed to produce any chain of documents in support of his contention except one post-dated cheque along with its memo. it is also matter of consideration that alleged cheque which was produced by accused at Ex...4/A of UBL Bank is of dated 20.12.2018 but cheque was presented into bank on 15.03.2019 and no such plausible explanation given by complainant for such huge delay of presenting the subject cheque before bank. As per complainant that he had submitted cheque before UBL Bank Rohri Branch whereas per record, it appears that cheque was presented before Bank Islami Branch at Sukkur. During arguments, learned defense counsel argued that accused had issued blank cheque to third party as surety wherefrom complainant received the cheque and after filling it, he blackmailed the accused. Such contention of accused require consideration as in cross examination, complainant admitted that handwriting on cheque is with different style. As per complainant that he had handed over open file to accused but no such proof is brought on record in this regard as well as he admitted that he failed to produce any proof with respect to ownership of plot. In statements of complainant and PW Muhammad Ibrahim, in manner under which they have shown the purchasing of plot by accused did not appeal to judicial mind. As per statements of both witnesses that accused just came at office without visiting the physical verification of necessary documents of plot, signed sale agreement and issued post-dated cheque on which complainant party handed over the possession of plot to accused and under normal course of business dealing naturally such situation is hardly believable. It is also admitted position on part of PW-Muhammad Ibrahim that he had not visited the alleged plot as well as he has no knowledge with respect to real owner of plot."

5. 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 and remained at a loss to show how a conviction was possible under the circumstances, particularly in view of the points noted herein above.

6. Indeed, it is well settled that the presumption of innocence and standard of proof beyond a reasonable doubt are fundamental tenets of a criminal trial, and even a single circumstance that serves to create reasonable doubt in a prudent mind as to the guilt of the accused entitles him to that benefit, not as a matter of grace or a concession, but as a matter of right. If any authority is required in that regard, one need look no further than the Judgments of the Supreme Court in the cases reported as Muhammad Akram v. The State 2009 SCMR 230 and Tariq Pervez, v. The State 1995 SCMR 1345.

7. It is axiomatic that the presumption of innocence applies doubly upon acquittal, and that such a finding is not to be disturbed unless there is some discernible perversity in the determination of the trial Court that can be said to have caused a miscarriage of justice., and on that score one need turn no further than the judgment of the Supreme Court in the case reported as the State v. Abdul Khaliq PLD 2011 Supreme Court 554, where after examining a host of case law on the subject, it was held as follows:-

> "From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced 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. It has been categorically held in a plethora of judgments that 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. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the, findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). 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."

8. However, in the matter at hand the learned trial Judge has advanced valid and cogent reasons in acquitting the Respondents and no palpable legal justification has been brought to the fore for that finding to be disturbed. As such, the Appeal is found to be devoid of merit and stands dismissed accordingly.

JUDGE