

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.606 of 2022

Date	Order with signature of Judge
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1. For order on office objection at 'A'
2. For hearing of case

05.7.2023

Mr. Abdul Rehman, advocate for the appellant
Mr. Muntazir Mehdi, Additional PG
Mr. Azam Baloch, DSP Keamari, Karachi
Mr. Raza Mian, DSP (Legal)
SIO/IO Ghazanfar Ali, PS Docks Karachi
SIP Siraj Khattak, PS Docks Karachi
SIP Siddiq, PS Docks, Karachi

ORDER

ADNAN-UL-KARIM MEMON, J. – Through this order, I intend to decide the captioned Criminal Acquittal Appeal arising from the impugned Judgment dated 19.08.2022, passed by the Court of Civil and Judicial Magistrate, Karachi West in Case No.347/2022 (Re: *The State Vs Abu Sufiyan*), whereby the private respondent was acquitted under Section 245(i) Cr.P.C.

2. The charge against the private respondent is that on 22.12.2021 at bank time at the Habib Metropolitan Bank West Wharf Karachi respondent / accused being the owner of Maheen Enterprises company under obligation to Rs.20,00,000/-, dishonestly issued one cheque of Rs.250,000/- bearing No.1202 and when the complainant presented such cheque which was dishonored, thus he was charged with an offense under Section 489-F, P.P.C. by the police of PS Docks Karachi vide F.I.R No.04 of 2022.

3. After registration of F.I.R. usual investigation was started and after completing the same challan was submitted in the Court of law, thereafter a formal charge was framed against respondent No.2, to which, he pleaded not guilty and claimed to be tried. At trial the prosecution examined as many as six witnesses to prove the case; however, in the statement of the accused recorded under Section 342 Cr. P.C., respondent No.2 denied the allegation leveled against him by pleading his innocence. After recording evidence, the trial Court acquitted respondent No.2 as stated in para-1 supra.

4. Mr. Abdul Rehman learned counsel representing the appellant submits that the impugned Judgment is not sustainable under the law as there was sufficient evidence available on record against the private respondent but the trial Court brushed aside the same, more particularly, the written business transaction, however, the private respondent was acquitted without assigning any valid reason; that the prosecution witnesses have supported the version of the appellant; however, the trial Court without looking into the documentary evidence has passed the impugned Judgment hurriedly, which is not sustainable; that the impugned Judgment is based upon misreading and non-reading of evidence; that the trial Court has disbelieved strong documentary evidence produced by the appellant without assigning sound reasons and prayed for converting the acquittal of the respondent No.2 to the conviction.

5. Mr. Muntazir Mehdi, learned Additional PG has supported the impugned Judgment by submitting that there was no probability of the private respondent being convicted for the offense under Section 489-F P.P.C, hence the Judgment of the trial Court is well-reasoned and speaking one hence needs not to be interfered by this Court; that the appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. He further argued that it is by now well-settled that acquittal once granted to an accused cannot be recalled merely on the possibility of a contra view. Unless, the impugned view is found on the fringes of impossibility, resulting in miscarriage of justice and freedom once obtained cannot be recalled; therefore, he prays for dismissal of instant Criminal Acquittal Appeal.

6. I have considered the arguments advanced by the counsel for the appellant as well as learned APG and examined the grounds raised by the appellant in the memo of appeal as well as the contents of FIR, challan, and charge framed by the learned trial Court and the impugned judgment dated 19.08.2022 passed by learned XIV-Civil Judge & Judicial Magistrate West Karachi in Case No.347/2022.

7. I have noted from the record that the prosecution failed to prove the dishonest intention i.e. mensrea of respondent No.2 for issuing the cheque in question. The appellant mainly relied upon the agreement at Ex.04/A and asserted that respondent No.2 remained unable to pay his amount and handed over to him cheques in December 2022 and he deposited the said cheques for encashment but the same were also dishonored and relied upon return memos at Ex.04/B, Ex.04/B-1, Ex.04/C, Ex.04/C-1, Ex.04/D and Ex.04/D-1. The aforesaid point of view of the

appellant was discarded by the trial Court on the premise that the complainant failed to prove the dishonest intention of respondent No.2 for the issuance of the cheque in question. Further, the learned trial Court observed that neither the complainant had entered into a written agreement with respondent No.2 nor disclosed the specific year of entering into such a relationship with respondent No.2 about handing over Rs.25,00,000/-. The complainant also deposed in his examination in chief that he has received profit from the accused upon his investment on the principal amount which accumulated from Rs.600,000/- to 700,000/- to Rs.25,00,000/- during about 10 years, however, the complainant failed to disclose the exact figure of the amount of profit as well as part of principal amount which he received from the accused during such period. So far as the agreement dated 17.03.2020 is concerned the aforesaid point has been discussed in paragraph 18 of the impugned Judgment and a finding was given against the appellant on the premise that he failed to produce the witnesses of said agreement for which no explanation was given.

8. The Manager of the bank has deposed that private respondent No.2 had stopped the payment to the drawer / appellant and the learned trial Court disbelieved the version of the appellant / complainant under the circumstances and acquitted respondent No.2 from the charge. An excerpt of the judgment is reproduced as under:-

“23. In view of the above discussion, I am of the considered opinion that accused Abu Sufiyan S/o Muhammad Iqbal is not guilty of the offence punishable under section 489-F PPC. The accused Abu Sufiyan S/o Muhammad Iqbal is therefore, acquitted under section 245(i) Cr.P.C from the charge under section 489-F PPC. The accused was granted bail and he is present before the Court. His bail bond is cancelled and surety stands discharged.”

9. The record further reflects that after the stoppage of the cheque in question when the same was presented for encashment the bank did not inform its customer as respondent No.2 had specifically instructed the bank to inform him before entertaining any of his cheques. The aforesaid stance explicitly shows that the bank ought to have informed the customer before returning the memo of the cheque as bounced though the payment was already stopped by the customer as such the question of attracting the provision of Section 489-F PPC does not arise in such circumstances, therefore, in my humble view, the learned trial Court has rightly given findings to the effect that the prosecution has miserably failed to prove the dishonest intention i.e. mensrea of the accused for issuing cheques in question being the mode of payment to have been issued against returning the amount of complainant, showing that the accused was liable to pay the amount for which the accused is said to have been issued such cheques. Mere issuance of cheque and its becoming dishonored later, being actus reus, would not be able to attract the provisions of Section 489-F PPC

simply for want of the basic element of dishonesty in the matter. Thus mere issuance of a cheque and its subsequent dishonoring could not attract the provision of Section 489-F PPC.

10. Primarily the evidence brought on record does not transpire confidence which could be made the basis for conviction. Judgment of acquittal can be reversed where the trial Court committed glaring misreading or non-reading of evidence and recorded its findings in a fanciful manner, contrary to the evidence brought on record.

11. I have noticed that the trial Court's Judgment is very elaborative and needs no further deliberation on my part as no illegality has been pointed out by the appellant; even otherwise it is a well-settled principle of law that the burden of proving the case is always upon the shoulders of prosecution which are bound to prove the same beyond the shadow of reasonable doubt and if a single circumstance creates doubt it goes in favor of accused, the benefit of which shall be extended to the accused not as a matter of grace but as a matter of right as laid down by the Supreme Court of Pakistan in the cases of *Tariq Pervaiz v. The State* (1995 SCMR 1345), *Muhammad Akram v. The State* (2009 SCMR 230) and in the case of *Muhammad Zafar and another v. Rustam and others* (2017 SCMR 1639).

12. It is also a settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from an appeal against acquittal because the presumption of double innocence is attached. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary, or foolish, which are lacking in this case. Reliance is placed on *Inayat Ullah Butt v. Muhammad Javed etc.* (PLD 2003 SC 563), *Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others* (2017 SCMR 1710).

13. In view of the above legal position of the case, the impugned judgment seems to be elaborate, speaking one hence does not suffer from misreading, non-reading, or non-appraisal of evidence, and it does not warrant the interference of this Court.

14. From the above, I have concluded that the acquittal of respondent No.2 does not suffer from any illegality to call for interference with the impugned judgment. The learned trial Judge has advanced valid and cogent reasons for passing a finding of acquittal in favor of respondent No.2 and I see no legal justification to disturb the same. Resultantly, the instant Criminal Acquittal Appeal is dismissed.

JUDGE