

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Acquittal Appeal No.S-46 of 2022

Date of hearing: 15.08.2024
Date of decision: 15.08.2024

Appellant: Syed Shabbir Ahmed Jilani, through Mr. Ishrat Ali Lohar, advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 24.01.2022, passed by Judicial Magistrate-I Hyderabad, in Cr. Case No.1565 of 2021, outcome of FIR bearing Crime No.125/2021, under Section 489-F PPC, registered at PS City, Hyderabad, whereby the private respondent/accused has been acquitted by extending him benefit of doubt.

2. Brief facts of the case are that the complainant namely Syed Shabbir Ahmed Jilani S/O Syed Nisar Ahmed was a businessman and accused Muhammad Yasir S/O Nanhay Khan was his follower/akeedatmand. That the accused obtained friendly loan amounting to Rs. 20,00,000/- from complainant for which he issued a cheque in lieu of such amount which on presentation was dishonored then complainant lodged FIR vide Crime No. 25/2021 U/S: 489-F PPC at PS City which was pending adjudication before court. Meanwhile, on 15.09.2021 at 1700 hours accused Muhammad Yasir came at the house of complainant and in lieu of Rs. 20,00,000/- the accused issued another cheque bearing No. 00238012 dated 17-09-2021 amounting to Rs. 25,00,000/- drawn at Summit Bank Branch Hyderabad including five lac penalty and promised him that same would be encashed. The complainant presented the said cheque in his account at MCB Bank Limited Resham Bazar Branch Hyderabad but the cheque was dishonored on 20.09.2021 and bank returned the cheque to complainant with memo with reason of dormant account. Thereafter, complainant contacted accused who refused to pay the same. The complainant through court order lodged FIR against accused Muhammad Yasir Khan.

3. After full-fledged trial, learned trial Court acquitted the private respondent vide impugned judgment dated 24.01.2022, hence, this criminal acquittal appeal.

4. Per learned counsel for the appellant/complainant that learned trial Court has passed the judgment in violation of law and there was sufficient material available on record to convict the private respondent/accused but learned trial Court acquitted him on flimsy grounds. Lastly, he prayed for setting aside of the impugned judgment and allowing of the instant criminal acquittal appeal.

5. Heard learned counsel for the appellant/complainant and perused the material made available on the record.

6. It reflects from the impugned judgment that the learned trial court has mainly acquitted the private respondent on the reasoning mentioned in paragraphs No.13 & 14 of impugned judgment which are reproduced as under:-

“13. Let the evidence be discussed in its true prospect while keeping in view the above principles of law. It is the case of prosecution that complainant gave an amount of Rs.20,00,000/- to accused and accused dishonestly issued the aforesaid cheque to complainant which was dishonored on presentation for which the complainant lodged FIR vide Crime No. 25/2021 at PS City meanwhile on 17.09.2021 the accused came at his house and issued aforesaid cheque which has also been dishonored. Admittedly, the complainant has failed to depose that on which date and time he gave such a huge amount to accused. Even the prosecution has failed to examine any single witness of alleged transaction. It is admitted fact that the complainant has failed to produce any agreement of such transaction even receipt of payment before this court. The prosecution has examined PW/ASI Muhammad Zubairuddin at Exb.06 who has admitted that during course of investigation the complainant has not produced any witness who could testify that complainant has given such amount to accused. The complainant has failed to bring forward any reliable proof which could substantiate that cheque in question was for the fulfillment of any obligation with regard to alleged transaction. The reliance can be placed on judgment reported in 2020 P. Cr. L. J 1195 Shahid Mehmood VS The State, 2020 MLD 1803 Abdul Khaliq vs Shahbaz Ahmed and others and 2021 P.Cr.L.J 586 (Muhammad Ashraf Vs The State).

14. The crux of the above discussion reflects that the case of prosecution is replete with serious infirmities. Definitely, mere possession/issuance of a cheque is insufficient for convicting accused, but said cheque to be backed by certain obligation or a loan, which is flagrantly missing in present case. The cheque in question, having repeatedly been denied by accused by stating that he has not issued said cheque to complainant, heavy burden lay upon the complainant to discharge the onus of proof completely, to which he has failed to do. Reliance can be placed on judgment reported in 2015 YLR 691 Shahid Hussain vs Prem Kumar and others.”

7. It is well settled by now that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by the Honourable Supreme Court in the case of State Versus Abdul Khaliq and others (PLD 2011 SC 554), wherein the Hon'ble Supreme Court has held as under:-

“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 re-appraisal 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. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”*

8. The sequel of above discussion is that the learned trial Court has committed no illegality or irregularity while recording acquittal of the private respondent/accused by way of impugned judgment, which even otherwise does not call for any interference by this Court by way of instant Criminal Acquittal Appeal, the same fails and is dismissed accordingly together with listed applications.

JUDGE

Irfan Ali