

**IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR.**

Criminal Acquittal Appeal No.S-78 of 2024

Date of hearing: 16.10.2024

Date of decision: 16.10.2024

Appellant:- Sanwan Khan Khoso through Mr. Achar Khan Gabol,
Advocate

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 10.06.2024, passed by 1st. Civil Judge and Judicial Magistrate, Naushahro Feroze, in Criminal Case No.19/2024, outcome of FIR bearing Crime No.04/2024, u/s 489-F PPC, registered at PS Phull, Naushahro Feroze, whereby the private respondent/accused has been acquitted by extending him benefit of doubt.

2. The brief facts of the case are that on 14-01-2024, complainant Sanwan Khan Khoso, registered FIR No. 04 of 2024 at Phull Police Station, Naushahro Feroze. He stated that accused Allah Rakhio in presence of witnesses, namely Muharam Ali and Bakhsh Ali had taken Rs.9600000/- from him for business purpose and lieu of such payment the accused had promised to give the agricultural land measuring (04-04) Acres in Deh Manglo. On 20.10.2023, in presence of the aforesaid witnesses, when the complainant demanded the amount, the accused issued Cheque No.1587783179 A/c No.MCB 00838010003793 of Phull Branch. The complainant presented the said cheque before the concerned Bank for encashment on 05.11.2023, the same was bounced due to insufficient balance and such memo of dishonor was affixed on the said cheque by the Bank authorities. Thereafter, he approached the accused for payment of his amount, who kept him on hollow hopes and ultimately refused in presence of the witnesses. Thereafter complainant went to Police Station and lodged the FIR.

3. After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondents vide impugned judgment dated 10.06.2024, hence, this criminal acquittal appeal.

4. Heard learned counsel for the appellant and perused the impugned judgment as well as the depositions available on record.

5. It reflects from the impugned judgment that the learned trial court has mainly acquitted the private respondents on the reasons that there appears that the accused is real brother of complainant and has allegedly received the amount from him for business purpose, but the complainant has failed to produce any receipt, agreement, witness or any other proof in this regard. The complainant and his witnesses have neither disclosed about the date, time or even mode of payment of such a huge amount of Rs.96,00000/-. The IO of the case has confined his investigation to the extent of dishonor of cheque only and nothing has been brought on record to substantiate the charge against the private respondent, even the complainant did not bother to keep the account/record of amount against the private respondent. Apart from above, there are material contradictions in the evidence of witnesses and legal flaws which have been discussed and considered by the learned trial Court and has rightly acquitted the private respondent from the charge.

6. 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.”

7. The upshot 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 application.

J U D G E

ARBROHI