

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Cr. Acquittal Appeal No. S- 136 of 2020

DATED **ORDER WITH SIGNATURE OF JUDGE**

1. For orders on M.A No.3709/20.
2. For orders on M.A No.3710/20.
3. For hearing of main case.

10.08.2020

Mr. Aziz Ahmed Leghari, Advocate for appellant/complainant.

Mr. Mian Taj Muhammad Keerio, Advocate for respondents No.1 and 2.

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ABDUL MAALIK GADDI, J- The captioned acquittal appeal is directed against the order dated 09.05.2020 passed by the learned Sessions Judge, Mirpurkhas in Sessions Case No.126 of 2020 arisen out of Crime No.19 of 2020 registered U/S 324, 147, 149, 427, 403, 504 PPC at PS Town, whereby the learned trial Court after hearing the parties acquitted the accused on application U/S 265-K Cr.P.C. by observing that no case against the respondents No.1 & 2 has been made out.

2. Brief facts of the prosecution case are that on 16.02.2020 the complainant was present at Mirpurkhas Toll Gate when AC Coach No.BSB 255 came from Karachi, he boarded in the said Coach from Toll Gate Mirpurkhas, when the Coach reached Muhajir Colony Ground some passengers abused the conductor Tanveer Hussain by asking him as to why Coach was not stopped at their place for de-boarding them on which said conductor refuted them that they had not asked him as such complainant intervened to resolve and those persons were Naveed of Echo Sound, Kamran and Sabir, meanwhile Coach was stopped by driver Wali Muhammad Brohi and two unknown persons came on motorcycle in front of Coach, abused and

beaten the conductor Tanveer Hussain, one unknown person took out pistol and fired straight upon Tanveer Hussain with intention to kill him but he fell down and he sustained injury on upper side of left eye with oozing of blood thereafter accused Naveed took cash from the pocket of conductor Tanveer Hussain, Sabir caused loss to vehicle abused them and went away. Later on, conductor Tanveer was brought to hospital and then he appeared at police station and lodged instant F.I.R.

3. Learned counsel for the appellant / complainant at the very outset, submits that the impugned order is not sustainable under the law as there was sufficient evidence available on record against the accused persons but the trial Court brushed aside the same, more particularly, the accused were acquitted U/S 265-K Cr.P.C without assigning any valid reason.

4. Conversely, learned counsel for the respondents No.1 and 2 submits that there is no gross illegality, irregularity or infirmity in the impugned order as there are sufficient reasons and grounds which create reasonable doubt in favour of respondents No.1 and 2 and they are appearing before the trial Court without any fault on their part although they have already been acquitted by the competent Court having jurisdiction.

5. I have heard the parties at a considerable length and have perused the impugned order. During the course of arguments, learned counsel for the appellant could not show the specific part of the impugned order wherein the trial Court has committed any gross illegality or irregularity. As per record, it appears that accused / respondent No.1 had gone to Malaysia on 11.02.2020 and returned back to Pakistan on 18.02.2020 whereas F.I.R was lodged on 16.02.2020 and when this aspect of the case confronted to the learned

counsel for the appellant, he has no satisfactory answer with him. It is also noted that the name of accused / respondents No.1 and 2 have not been given in the F.I.R whereas only the name of accused / respondent No.1 Raja Kamran has been given by the complainant and eye witnesses in their statements recorded under sections 161 Cr.P.C. It is also surprising to note that injured Tanveer Hussain (Conductor) who sustained injuries has not been made witness in the challan sheet. The appellant has also failed to produce any convincing evidence before the trial Court for conviction against private respondents.

6. It is not out of context to make here necessary clarification that appeal against acquittal has distinctive feature and approach to deal with appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in latter case. Order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary in nature or based on misreading, non-appraisal of evidence or is artificial, arbitrary and led to gross miscarriage of justice. Mere disregard of technicalities in a criminal trial without resulting injustice, is not enough for interference. Suffice is to say that an order / judgment of acquittal gives rise to strong presumption of innocence rather double presumption of innocence is attached to such an order. Reliance in this respect may conveniently be placed on 1998 P.Cr.L.J 1576, 1985 P.Cr.L.J 2973, 1991 SCMR 2220, 1993 SCMR 28, 1985 P.Cr.L.J 457, PLD 1966 Supreme Court 424. While examining the facts in the order of acquittal, substantial weight should be given to the findings of the lower Courts whereby accused were exonerated from the commission of crime as held by the Apex Court in 1998 SCMR 1281. In 1977 P.Cr.L.J 477, it was held that acquittal would be unquestionable when it could not be said that acquittal was either perverse or that acquittal

judgment was improper or incorrect as it is settled that whenever there is doubt about guilt of accused, its benefit must go to him and Court would never come to the rescue of prosecution to fill the lacuna appearing in evidence of prosecution case as it would be against established principles of dispensation of criminal justice.

7. Whatever mentioned above, more particularly in light of case law referred above, I reached at the irresistible conclusion that the appellant has miserably failed to prove his case against the accused persons beyond shadow of reasonable doubt, therefore, no interference in the impugned order is required by this Court. Resultantly, the instant Criminal Acquittal Appeal being devoid of any merit is hereby **dismissed** along with listed application[s].

JUDGE

**Hafiz Fahad **
10.08.2020