

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Acquittal Appeal No.S-64 of 2020

1. For orders on office objection.
2. For orders on M.A- 1448 of 2020 (Exemption application).
3. For hearing of main case.

05.10.2020

Mian Taj Muhammad Keerio, Advocate for appellant.

Ms. Rameshan Oad, A.P.G.

JUDGMENT

Abdul Maalik Gaddi, J:-This criminal acquittal appeal has been filed by appellant / complainant Syed Raza Abbas, challenging the judgment dated 14.01.2020, whereby the learned trial court after full dressed trial and after hearing the learned counsel for the parties, acquitted the private respondent u/s 245(1) Cr.P.C. from the charge by extending benefit of doubt to him.

2. Precisely, relevant facts of the case as disclosed in the FIR are that accused / private respondent dishonestly cheated Call Courier Private Limited, Hyderabad at Taluka Sanjoro, District Sanghar as courier in the said Company as it was his duty to deposit cash amount on daily basis, but during the period 04.01.2019 to 11.02.2019, he failed to deposit an amount of Rs.4,69,996/- in bank account of said Courier Company, thus committed an offence under section 420 and 468 PPC.

3. After framing the charge against accused, the trial court in as much as recorded the evidence of four (04) witnesses including complainant and thereafter, statement of accused as required u/s 342 Cr.P.C. was recorded, wherein he denied the prosecution allegations and pleaded his innocence. However, neither he examined himself on Oath nor produce any witness in his defence.

4. Then, as stated above, after hearing the learned counsel for the parties, the learned trial court acquitted the respondent / accused through impugned judgment dated 14.01.2020 hence this acquittal appeal.

5. Learned counsel for the appellant mainly contended that the judgment passed by learned trial court is perverse and the reasons are artificial viz-a-viz the evidence on record; that the grounds on which the trial court proceeded to acquit the accused are not supported from the documents and evidence on record. He further submitted that accused has directly been charged and the discrepancies in the statements of witnesses are not so material on the basis of which accused could be acquitted. He further contended that learned trial court has based the findings of acquittal mainly on the basis of minor contradictions on non-vital points of the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated therefore, under these circumstances, he was of the view that this appeal may be allowed and the accused may be given exemplary punishment.

6. On the other hand, learned A.P.G. appearing for the State has supported the impugned judgment by arguing that the impugned judgment passed by the learned trial court is perfect in law and on facts; that no direct evidence is available against the respondent / accused to connect him in the commission of offence; that whole case of the prosecution is based upon surmises and conjunctures, therefore, no reliance could be safely placed for conviction of the respondents.

7. Arguments heard and record perused.

8. After scanning the evidence of prosecution witnesses, I have come to the conclusion that prosecution has miserably failed to establish its case beyond any reasonable shadow of doubt. From perusal of the impugned judgment, it reveals that the trial court has recorded the findings of acquittal in favour of the private respondent with sound and significant reasoning. As per prosecution case, the alleged incident took place in between 04.01.2019 to 11.02.2019; however, the FIR was lodged with delay of about one and half month and no plausible explanation in this regard has been furnished by the complainant. Further perusal of F.I.R. does not show that how and when complainant came to know that the receipts of bank submitted by respondents were allegedly forged one. It is noted that neither complainant nor Investigating Officer of the case brought on record such alleged forged receipts. Further during his cross-examination, Investigating Officer has admitted that he during investigation was not shown any receipt by complainant, which shows that even the subject / relevant documents i.e. alleged forged receipts were not produced by prosecution to prove the guilt of the accused / respondents.

9. It is also noted that complainant during his evidence before the trial Court, has made improvements and deposed that Director of Company had given time to respondent with assurance of one Dr. Nishan Ali and it was settled that he will pay the amount but even said Dr. Nishan Ali was neither produced nor examined in Court by prosecution to substantiate such stance.

10. Apart from above, there are many material contradictions, infirmities and inconsistencies in the evidence of prosecution witnesses who seems to be interested witnesses being employees of the complainant company hence their evidence is not confidence inspiring. Further, no independent witness has been examined by prosecution. No recovery whatsoever has been affected from the accused / respondent. All these aspects have been highlighted by the learned Presiding Officer of the trial court in its judgment.

11. I have also perused the impugned judgment and come to the conclusion that the learned trial Court has dealt with all aspects of the matter quite comprehensively in the light of all relevant laws dealing with the matter and the appellant in his appeal is unable to point out that the impugned judgment by any means suffers from any illegality or miscomprehension or non-appreciation of evidence by way of documents and evidence available on record. I am also not satisfied with any of the grounds agitated by appellant in the memo of appeal for indulgence of this Court in the matter. Therefore, I find that the impugned judgment passed by trial Court is perfect in law

and facts and needs no interference by this Court. This matter pertains to year 2019 and this appeal is pending since its filing i.e. 13.02.2020. About 16 months have been passed and the respondent has faced agony of trial since then. As observed above, the private respondent has been acquitted by the competent Court of law, therefore, under the law once an accused was acquitted by the competent Court of law after facing the agonies of the trial, then he/they would earn the presumption of double innocence which could not be disturbed by the appellate Court lightly. Consequently, this criminal acquittal appeal being devoid of merits is hereby dismissed alongwith pending application(s).

JUDGE

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