

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.158 of 2020.

Date:	Judgment with signature(s) of the Judge(s)
Appellant	: M/s Indus Motors Company Limited, Through Mr. Amir Raza Naqvi, advocate
Respondent No.1.	: The State Through Ms. Rahat Ahsan, Addl. P.G. Sindh
Respondent No.2.	: Tariq Mehboob Cheema Through Mr. Muhammad Irfan, advocate.
Date of hearing	: 22.05.2025.
Date of judgment	: 30.05.2025.

JUDGMENT

KHALID HUSSAIN SHAHANI, J. – This order is intended to dispose of the instant Criminal Acquittal Appeal filed by M/s. Indus Motor Company Limited (hereinafter referred to as "the Appellant" or "Complainant") against the order dated 11.01.2020, passed by the XIIth Judicial Magistrate Karachi (Malir) in Criminal Case No.46/2016 (Old No.541/2012) emanating from FIR No.224/2012, offence U/S 408/420 P.P.C. of Police Station Sukkun, Malir Karachi, whereby Respondent No. 2, Tariq Mehboob Cheema (hereinafter referred to as "the Respondent/Accused"), was acquitted on an application filed under section 249-A Cr.P.C.

2. The brief facts leading to the instant appeal are that on 07.07.2012, the Appellant, through its then authorized representative Mr. Badar Shafat, the Senior Manager Administration and Security, lodged FIR No. 224/2012 for offence under Sections 408/420 PPC at Police Station Sukkun, Malir Karachi, against Respondent No. 2, Tariq Mehboob Cheema. The gravamen of the accusation was that during his tenure as Senior Manager Parts from July 01, 2007, to July 01, 2011 (before his transfer to the sales department as General Manager Sales), the Respondent/Accused engaged in illegal activities, defrauding the company through cheating, embezzlement, misrepresentation, and criminal breach of trust. Specifically, he was alleged to have made illegal adjustments in the invoices of Toyota Central Motors (TCM), an authorized dealership, by granting unauthorized

discounts/adjustments against parts invoicing, thereby causing a substantial loss of more than Rs. 8.5 million to the company. The FIR claimed that the Respondent/Accused was the sole beneficiary of these fraudulent activities, which were purportedly unearthed during an internal audit.

3. Following the registration of the FIR, the Investigation Officer PI Jaffar Khan Baloch, submitted the charge sheet (No: 168/2012) against the Respondent/Accused, initially showing him as an absconder. Subsequently, the Respondent/Accused obtained pre-arrest bail and appeared before the learned trial court on December 22, 2012, to face the trial.

4. During the pendency of the trial, Mr. Badar Shafat, the authorized representative who lodged the FIR, resigned from the Appellant company. Copies of the relevant documents were supplied to the Respondent/Accused, and a formal charge was framed against him on January 30, 2013, to which he pleaded not guilty and claimed trial.

5. On 12.12.2013, the proceedings against the Respondent/Accused were stopped in pursuance of section 249 Cr.P.C. due to the continuous absence of the complainant. However, on March 11, 2014, the counsel for the complainant filed an application for the resumption of the trial, which was initially dismissed by the learned trial court. The Appellant then filed a Criminal Revision against this dismissal order, which was allowed by this court, leading to the restoration of proceedings against the Respondent/Accused.

6. The learned trial court proceeded with the trial, examining two prosecution witnesses: PW-01 Ahmed Waseem Khan and PW-02 IO/DSP Jaffar Khan Baloch. After the examination of these witnesses, the Respondent/Accused filed an application under section 249-A Cr.P.C. The learned trial court, after hearing arguments, acquitted the Respondent/Accused through an order dated October 13, 2017.

7. Aggrieved by this acquittal, the Appellant preferred Criminal Acquittal Appeal No. 552 of 2017 before this court. Vide order dated November 20, 2019, this Court allowed the said appeal and remanded the case back to the learned trial court with a specific direction to re-hear the parties' advocates on the application under section 249-A Cr.P.C. and pass a fresh order without being influenced by the earlier order. Pursuant to the

remand order, the learned trial court re-heard the application under section 249-A Cr.P.C. and, through the impugned order dated January 11, 2020, once again acquitted the Respondent/Accused. It is against this second acquittal order that the Appellant has preferred the instant Criminal Acquittal Appeal.

8. The learned counsel for the Appellant vehemently assailed the impugned order, contending that the learned trial court failed to appreciate the available incriminating material and documentary evidence against the Respondent/Accused. The main thrust of the arguments revolved around the points that there was ample incriminating material on record upon which the Respondent/Accused could have been convicted beyond a shadow of a doubt had the trial been allowed to proceed to its logical conclusion. He argued that the learned trial court allegedly failed to consider crucial documentary evidence produced by PW-01, including the audit report, net offer documents, parts sale policy, net officer policy documents, summary report, and various transaction documents detailing adjustments against previously invoiced individual parts, cash transactions, and transactions regarding parts below net offer policy. He argued that the impugned judgment was criticized for being erroneous in respect of facts and law, exhibiting illogical reasoning and non-adherence to judicial principles. It was contended that the trial court failed to consider the prime provisions of Sections 408 and 420 PPC, despite PW-1 having fully explained the misappropriation and fraud committed by the Respondent/Accused. He argued that the prosecution witnesses did not support the complainant's version was deemed wholly misconceived and erroneous. He added that the trial court's failure to exercise its powers under Article 161 of Qanoon-e-Shahadat for calling relevant record and its non-consideration of ordering additional evidence by this Court were also highlighted. He emphasized that in white-collar crimes, documentary evidence is paramount and ought to have been believed, requiring the accused to provide an explanation under Section 342 Cr.P.C. He argued that the learned trial court's reasoning regarding the complainant's non-appearance was challenged, explaining that the complainant was an authorized representative who had been terminated from service, hence his inability to appear. The Appellant reiterated that the documents clearly showed adjustments for "Hardware," prior invoicing, and sale of non-net offer parts under net offer, indicating undue discounts and

misappropriation by the Respondent/Accused. The impugned order was branded as perverse, arbitrary, and carelessly passed, resulting in a miscarriage of justice and not being sustainable in law. It was argued that the trial was not allowed to conclude, and unnecessary haste was shown by the learned trial court in passing the impugned order.

9. Conversely, the learned counsel for the Respondent No. 2 vehemently opposed the appeal, asserting the correctness and legality of the impugned acquittal order. His arguments, largely echoing those presented before the trial court, were based on crucial points that that there was no concrete proof available to establish that the Respondent/Accused had committed criminal breach of trust or misappropriation of company funds. The audit was conducted on the instructions of the CEO, but the CEO's statement under Section 161 Cr.P.C. was never recorded by the IO, nor was the CEO cited as a witness in the charge sheet. The usual yearly audit by A.F. Forgonson Chartered Company was not annexed to the prosecution case, despite its relevance. No complaints were made from the open market or dealers against the accused regarding fraud or cheating in parts sales. Three persons were signatories to the sales incentives policy (Ex: 3/D), but none appeared before the court, nor did the IO record their statements. Ex: 3/E did not bear any signature, name, or time, making the accusation based on it groundless. Furthermore, Ex: 3/G and 3/H lacked the accused's signature, and Ex: 3/I was prepared after the accused's transfer. Several other documents (Ex: 3/A, 3/I, 3/J, 3/F, 3/H) also lacked signatures of the accused or subordinates. It was argued that the accused had been dragged into a groundless charge since 2012, and there was no probability of his conviction in this offence. The complainant never appeared for evidence, and his counsel ultimately gave him up, indicating no chance of his future appearance. Both PW-1 (Ahmed Waseem Khan) and PW-2 (IO Jaffar Khan Baloch) made significant admissions during their cross-examination, revealing several illegalities, irregularities, and material flaws in the prosecution case. It was emphasized that the object of a 249-A application is narrow, and if the charge is apparently groundless, acquittal is warranted.

10. The core of the matter revolves around whether the learned trial court was justified in concluding that the charge against the Respondent/Accused was groundless and that there was no probability of conviction, thereby warranting an acquittal under section 249-A Cr.P.C.

This Court notes that previously case was remanded for a fresh consideration of the 249-A application, underscoring the importance of a thorough re-evaluation.

11. Upon careful re-appraisal, several crucial points from the trial court's detailed judgment stand out, which collectively lead to the inescapable conclusion that the acquittal was well-founded. It is a matter of record that the complainant, Badar Shafat, was explicitly "given up" by his own counsel. This signifies a clear admission that the prosecution could not produce its primary witness, effectively weakening its case significantly. While the Appellant argued that the complainant was terminated, this fact does not automatically absolve the prosecution of its duty to present its case or substitute for the complainant's testimony, especially when the complainant was the one who personally lodged the FIR. The learned trial court rightly observed "number of flagrant loopholes and flaws in the prosecution case." These are not minor discrepancies but fundamental deficiencies that undermine the very foundation of the allegations. The cross-examination of PW-1 revealed critical admissions i.e. the audit was conducted on the CEO's directions, but the CEO was neither cited as a witness nor was any direction letter produced. This raises serious questions about the authenticity and basis of the audit.

12. PW-1 admitted that the audit report (Ex: 3/B) lacked signatures or names of subordinates, and he did not produce the external yearly audit report, despite it being the stated basis for accusing the Respondent/Accused in his 161 statement. He conceded that the sales incentives policy (Ex: 3/D) was signed by four designated persons, yet none of them were examined. Ex: 3/E, a crucial document for the embezzlement charge, was admitted to lack any signature, name, date, or time, and was not approved by the CEO. PW-1 admitted that witnesses from the sales, parts, and warehouse departments, who were involved in the process, were not cited despite his inquiries. Crucially, he admitted that no written complaints regarding embezzlement were received from any of the 42 dealers across Pakistan. He further admitted that the Respondent/Accused's signatures were not available on the entire sale invoices produced before the court, and that Ex: 3/I (a transaction document) bore the signature of Asad Chaudhry, dated October 10, 2011, *after* the Respondent/Accused's transfer. The fact that the Respondent/Accused was promoted multiple

times due to his performance also casts doubt on the allegations of long-term fraudulent activities during his tenure.

13. Admissions by Investigation Officer (PW-2 Jaffar Khan Baloch):
The IO's cross-examination further exposed weaknesses:

- *He admitted not recording the CEO's statement.*
- *He did not record statements of key personnel from sales, accounts, warehouse, or guards.*
- *He failed to visit the open market to verify misappropriation claims.*
- *Despite allegations spanning 2007-2011, the company only provided records for 2010-2011, leaving a significant gap in the evidence.*
- *He did not seize the computer system that generated the invoices, which could have provided crucial forensic evidence.*

14. The trial court rightly pointed out that many crucial documents (Ex: 3/B, 3/E, 3/F, 3/G, 3/H, 3/I) were mere photocopies, neither attested by the company nor by the IO, nor signed by competent authority. The distinction between "production of document" and "proof of document" is vital in criminal jurisprudence, and here, the documents remained unproven. More importantly, the trial court found that the basic ingredient of criminal law, "mens rea" (guilty mind), was missing on the part of the accused.

15. The FIR was lodged with a one-year delay, for which no satisfactory explanation was provided. Such unexplained delay invariably creates serious doubts about the veracity of the prosecution story, as consistently held by superior courts. Reliance could be placed on reported case 2017 P.Cr.L.J 1104. The trial court correctly applied the principles governing Section 249-A Cr.P.C., which empowers a Magistrate to acquit an accused at any stage of the trial if the charge is found to be groundless or if there is no probability of conviction, provided the parties are heard and reasons are recorded. Given the glaring deficiencies highlighted, the charge was indeed rendered groundless.

16. The Appellant's arguments, while emphasizing the existence of documentary evidence and the nature of white-collar crime, fail to

overcome the fundamental flaws identified in the prosecution's case. The mere production of documents does not equate to their proof, especially when their authenticity, source, and connection to the alleged crime are not established through credible witness testimony or proper forensic examination. The admissions made by PW-1 and the IO themselves severely undermine the prosecution's narrative, creating a chasm between the allegations and the evidence presented. The absence of key witnesses, the lack of proper documentation, and the failure to investigate crucial aspects of the case (like the CEO's role or complaints from dealers) collectively demonstrate that the prosecution failed to build a case with probability of conviction.

17. In light of the detailed re-appraisal of the evidence and the findings of the learned trial court, it is abundantly clear that the prosecution's case suffered from significant and incurable defects. The complainant's decision to give up his primary witness, coupled with the numerous admissions by the prosecution witnesses regarding the lack of proper investigation, unproven documents, and the absence of crucial corroborating evidence, leads to the undeniable conclusion that the charge against the Respondent/Accused was indeed groundless.

18. The learned trial court's order dated January 11, 2020, is well-reasoned, comprehensive, and based on a thorough and judicious analysis of the material placed before it. The findings that there was no probability of the accused being convicted in this offense are fully supported by the record. This Court finds no misreading or non-reading of material evidence, nor any misconstruction of facts or law that would warrant interference with the impugned acquittal order. The discretion exercised by the learned trial court under Section 249-A Cr.P.C. was sound and in consonance with established legal principles.

19. Therefore, for the reasons articulated above, the instant Criminal Acquittal Appeal is hereby dismissed. The impugned order dated 11.01.2020, passed by the XIIth Judicial Magistrate Karachi (Malir), acquitting Respondent No. 2, Tariq Mehboob Cheema, is upheld.

J U D G E