

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 775 of 2022

Appellant : Mst. Afshan through Mr. Ch. Abdul Rasool,
Advocate.

Respondents No.1. : Javed Hussain Jaffari through Mr.Qaim Ali
Memon, Advocate.

Respondent No.2 : The State through Ms. Seema Zaidi, Addl. P.G.
Sindh.

Date of hearing : 29.10.2025.

Date of order : 29.10.2025.

Date of reasons : _____

J U D G M E N T

TASNEEM SULTANA-J.: Through the instant Criminal Acquittal Appeal, the appellant/complainant Mst. Afshan w/o Abdul Ghaffar has assailed the order dated 24.11.2022 passed by the learned II Civil Judge & Judicial Magistrate, Karachi South, in Criminal Case No. 4019 of 2020 (FIR No.500/2018, P.S. Defence, under Sections 420, 468, 471 PPC), whereby the respondent/accused Javed Hussain Jaffari s/o Jan Muhammad Jaffari was acquitted from the charge under Section 249-A Cr.P.C.

2. The brief facts of the prosecution case, as unfolded in the FIR, are that the complainant alleged that she had sold out building No.48-C, Commercial Street No.22, Phase-II, DHA Karachi, to one Muhammad Amjad s/o Niaz Khan. Subsequently, in 2017, the present respondent allegedly executed a fake sale agreement in respect of another property bearing No.62-E, Phase-II, DHA Karachi, using complainant's forged signatures, and extended threats of false implication in cases. Thereafter, complainant lodged FIR No.500/2018 was thus lodged under Sections 420, 468, 471 PPC.

3. After investigation, challan was submitted, wherein the co-accused Amjad Baloch was declared absconder while the present respondent was sent up for trial. After observing all the pretrial codal formalities, as provided under Section 242 Cr.P.C, trial Court indicted accused/respondent No.1 under Section 242 Cr.P.C to which he pleaded not guilty and claimed trial vide plea recorded at Ex.02/A.

4. To prove its case, learned trial Court examined PW/complainant Afshan, PW Abdul Ghaffar, PW Shamim and then complainant gave up remaining witnesses.

5. On 28.09.2022 application under Section 249-A Cr.P.C was filed on behalf of accused/respondent on the ground that FIR was lodged in the year 2018 and till the date prosecution had failed to produce her witnesses.

6. After hearing learned counsel for the parties, vide order dated 24.11.2022, the learned Magistrate acquitted the accused under Section 249-A Cr.P.C which is challenged by complainant through instant appeal before this Court.

7. Learned counsel for the appellant argued that the trial Court failed to appreciate that the accused had fabricated a fake sale agreement, and that the expert report confirmed the signatures to be forged. It was submitted that the impugned order is illegal, arbitrary, and against the evidence on record, hence liable to be set aside.

8. Conversely, learned Addl. P.G for the State duly assisted by learned counsel for the respondent No.1 supported the impugned order, contending that the complainant's evidence was wholly deficient; she herself admitted that she never saw the accused, nor sold any property to him; and that there existed a civil dispute between her and the absconding co-accused Amjad Baloch. They further contended that it is settled principle accused once acquitted earns presumption of double innocence therefore, the impugned order having been passed with cogent reasoning does not warrant interference by this Court.

9. I have heard learned counsel for the parties and examined the material placed on record with great care.

10. From perusal of record it appears that the prosecution evidence itself destroyed the foundation of the case. The complainant and her husband, both being star witnesses, made admissions which completely nullify the allegations of cheating and forgery. Their depositions disclose that the respondent had no direct dealing with them, that he received no payment, and that the property in question had already been sold and transferred after full consideration. These categorical admissions strike at the root of the prosecution case and render the entire edifice of accusation without foundation.

11. The testimony of the broker further reinforces this conclusion, as he unequivocally stated that all transactions were handled by Amjad and that the respondent was only casually associated through business reference. This evidence, coming from the prosecution's own witness, erodes any possibility of attributing deception, inducement, or use of a forged document to the respondent. There is not an iota of proof that the respondent prepared, presented, or used any document for dishonest gain, nor that the complainant suffered any wrongful loss.

12. The ocular account was not only uncorroborated but exculpatory in nature. The delay of more than two years in setting the law into motion, the admitted receipt of full sale consideration, and the absence of any civil proceedings for cancellation of document unmistakably demonstrate that the dispute was of civil complexion which the complainant attempted to convert into a criminal prosecution. Such conduct alone is sufficient to cast serious doubt on the bona fides of the complaint. When the very witnesses who were expected to substantiate the charge have themselves exonerated the accused, no continuation of trial could serve any judicial purpose.

13. Even assuming that the forensic report had been formally produced and proved through competent evidence, its contents could not have materially altered the outcome. At its highest, the report indicates that the questioned signatures appearing on the disputed document were written by the respondent, but such fact alone does not fulfil the statutory ingredients of cheating, forgery, or use of a forged document. Criminal liability under sections 415, 420, 468 and 471 PPC cannot arise from the mere act of writing or signing unless accompanied by proof of dishonest intention, deception, or wrongful gain. The complainant and her husband clearly admitted that the respondent had neither cheated them nor received any payment, that they had already sold and transferred the property after full consideration, and that no loss was suffered by them. When the oral evidence of primary witnesses is itself exculpatory and negates the element of mens rea, no expert opinion could revive or reconstruct an offence that has been disowned by those directly affected. Thus, even if the forensic report had been formally proved, it would not have provided any legal basis for conviction in absence of substantive and corroborative ocular evidence.

14. The trial Court rightly observed that no specific role was assigned to the present accused in the FIR, and that even if the complainant's testimony were accepted at its highest, the allegations primarily revolved around civil disputes regarding ownership and transfer of property, which do not constitute sufficient basis for criminal conviction under Sections 420, 468, or 471 PPC.

15. It is worth to note that the prosecution had given up certain witnesses namely Raheemullah, Israr, Sami Ahmed, Habib ur Rehman and Shahnawaz. without offering any justification. Under Article 129(g) of the Qanun-e-Shahadat Order, the Court is entitled to draw a presumption that had such witnesses been produced, their evidence would have been unfavourable to the prosecution. This further weakens the already fragile case and supports the conclusion that no reliable material was available to connect the respondent with the alleged offence. Reliance is placed in the case of '**Lal Khan v. State**' (2006 SCMR 1846) wherein it has been observed as under:

“The prosecution is certainly not required to produce a number of witnesses as the quality and not the quantity of the evidence is the rule but non-production of most natural and material witnesses of occurrence, would strongly lead to an inference of prosecutorial misconduct which would not only be considered a source of undue advantage for possession but also an act of suppression of material facts causing prejudice to the accused. The act of withholding of most natural and a material witness of the occurrence would create an impression that the witness if would have been brought into witness-box, he might not have supported the prosecution and in such eventuality the prosecution must not be in a position to avoid the consequence.”

16. The law is settled that an accused once acquitted by trial Court earns presumption of double innocence; first, on account of the basic principle that every person is presumed innocent unless proven guilty; and second, due to the finding of acquittal recorded by the trial Court. Interference with an acquittal is permissible only when the order is arbitrary, perverse, or suffers from misreading or non-reading of material evidence. In the present case, no such perversity or illegality is demonstrated. The trial Court’s findings are well-reasoned, supported by the evidence, and based on settled principles of criminal jurisprudence. I, therefore, see no reason to disturb the acquittal recorded by the learned Magistrate. Reliance is placed in the case of ***State versus Abdul Khaliq and others (PLD 2011 SC 554)***.

17. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt, and if a single reasonable doubt arises, it must be resolved in favour of the accused, not as a concession but as a right. Reliance is placed on ***Tariq Pervaiz v. The State (1995 SCMR 1345)***, ***Muhammad Akram v. The State (2009 SCMR 230)***, and ***Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)***.

For the foregoing reasons, the Criminal Acquittal Appeal No. 775 of 2022 is dismissed. The impugned order dated 24.11.2022 passed by the learned II Civil Judge & Judicial Magistrate, Karachi South, is upheld. The respondent shall stand acquitted accordingly.

These are reasons of my short order dated 29.10.2025 whereby instant criminal appeal was dismissed.

JUDGE