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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Criminal Appeal No.S-25 of 2016

Appellant : Shafique Ahmed Qureshi, through Mr. Safdar Ali Ghouri, Advocate.

Respondents: The State through Ms. Rubina Dhamrah, ADPP.

Date of Hearing : 20.09.2017.

Date of Judgment : 20.09.2017.

JUDGMENT.

MUHAMMAD SALEEM JESSAR, J.- The appellant faced trial in Special Case No.23 of 2007 re-State v. Shafique Ahmed Qureshi (Crime No.05/2002 of Police Station ACE, Larkana, u/s 409, PPC r/w Section 5(2) Act-II of 1947) and at the conclusion of trial; after having been found guilty was convicted and sentenced to R.I. for 01 year with a fine of Rs.50,000/-, in default whereof R.I. for six months more, however, benefit of section 382-B, Cr.P.C. was extended to him vide judgment dated 26<sup>th</sup> March, 2016 of learned Special Judge, Anti-Corruption (Provincial), Larkana.

2. The allegation against the appellant as per FIR is that on 06-9-2002 Rahim Bux Arij, Circle Officer, ACE, Larkana lodged FIR on behalf of State, on receipt of permission from the competent authority, on the report of Mukhtiarkar, Land Revenue, Taluka Larkana under his No.SM/3588, dated 25.7.2002, to the effect that Munshi Shafique Ahmed Qureshi, Tapedar Tapa Sanhari, Taluka Larkana, has given in writing the Be-baki of his Tapa for the year Kharif 2001-2002 Rs.1,00,856/-. It was further alleged that during the verification of Bank challan so deposited by the Tapedar Munshi Shafique Ahmed Qureshi, Tapedar Tapa Sanhari from Taluka Office, Larkana, it

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transpired that he had deposited Rs.63,320/-, whereas the total demand of Kharif 2001-2002 of Tapa Sanhari was Rs.100,856/-, whereby he misappropriated an amount of Rs.37536/-, which amount after recovery from Khatedars was not credited in the Government exchequer and misappropriated by him willfully.

3. After collection of evidence, the I.O. submitted challan showing the appellant/accused as an absconder, who was subsequently arrested on the strength of NBWs issued by the trial Court and was released on bail pending trial.

4. On indictment, the appellant did not plead guilty to the charge and claimed trial.

5. At the trial, the prosecution examined 04 witnesses, namely, PW Ghous Bux, Supervising Tapedar Akil Circle, at Exh.4, PW Bux Ali, Supervising Tapedar Larkana Circle, at Exh.5, PW Rahim Bux Arij, Circle Officer ACE Larkana, at Exh.7 and PW Masood Ahmed Bughio, Mukhtiarkar Larkana, at Exh.8. On close of prosecution evidence, the appellant was examined under section 342, Cr.P.C, wherein he denied the charge, professed innocence and stated false implication, however, he declined to produce any defence or examine himself on oath as required under section 340(2), Cr.P.C, thus, the trial ended in conviction and sentence of the appellant as stated hereinabove, which has been impugned by filing instant appeal.

6. Learned counsel for appellant contended that the prosecution has failed to bring home the charge against the appellant through cogent and reliable evidence; that the witnesses produced by prosecution were inconsistent with each other rather contradicted on material aspects, benefit whereof must go to the appellant; that the findings of the learned trial Court are not supported from the record; that the witnesses produced by prosecution at trial were interested and

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were pressurized, thus, they deposed against the appellant favouring the prosecution, hence their testimony was wrongly relied upon by learned trial Court; that the charge against the appellant has not been established through evidence but the learned trial court wrongly and illegally convicted and sentenced the appellant for no valid reason, thus, the impugned judgment needs interference. Lastly, learned Counsel contended that it would appear from the record that the alleged misappropriated amount was deposited by the appellant/accused in the year 2013 after his arrest and such No Objection Certificate issued by Muktiarkar concerned was also placed by him on record, whereby the loss, if any, caused to the exchequer stood repaid.

7. Conversely, the learned ADPP appearing for the State supported the impugned judgment contended that the appellant has rightly been convicted by the learned trial Court.

8. The allegation against the appellant is that during his posting as Tapedar, Tapa Sanhari, Taluka Larkana, he had given in writing the Be-baki of his Tapa for the year Kharif 2001-2002 as Rs.100,856/-; however, during verification of Bank Challan deposited by him it revealed that an amount of Rs.37,536/- was missing and was found misappropriated by the appellant/accused. Being Tapedar of the area, it was the responsibility of the appellant to have deposited the amount of Rs.100,856/-, however, failure on his part to do so and deficit of Rs.37,536/- found during verification of record resulted in initiation of proceedings against him. The evidence brought on record does not reflect that whether the total amount of Rs.100,856/-, which was the demand of Tapa of the appellant, was deposited with him by the Khatedars or not and no direct evidence has come on record during trial that the amount of Rs.37,536/- was misappropriated by the appellant. In this context, the learned trial Court appears to have lost sight of very important piece of evidence of PW Masood Ahmed Bughio,

Mukhtiarkar, Larkana, who in his cross-examination has stated that he had not enquired whether the deficit amount was outstanding against khatedars of Tapa. Even the evidence of Circle Officer does not reflect as to whether the alleged amount was misappropriated by the accused or the same was outstanding against the khatedars. PW Rahim Bux, Circle Officer, ACE, Larkana, in his cross-examination stated that no khatedar came forward, nor any complaint against the accused was made during the investigation and nor any receipt was produced to show that accused had obtained the land revenue and had misappropriated the same. It is also a matter of record that the alleged misappropriated amount of Rs.37,536/- had been deposited by the appellant and to this effect a No Objection Certificate issued by Mukhtiarkar concerned was placed on record by the appellant. Mere repayment of the alleged misappropriated amount by the appellant does not establish the charge of misappropriation against him. As discussed above, no direct evidence has come on record to show that the amount Rs.37,536/- was in fact misappropriated by the appellant.

9. In addition to above, it may be observed that to constitute an offence under Section 409, PPC there must not only be entrustment but dishonest misappropriation or conversion to one's own use or dishonest disposal of property by the offender are the essential ingredients to constitute an offence under Section 409, PPC. As clearly obvious from the scrutiny of evidence, such ingredients are absolutely lacking in the present case. Reliance can be placed on the case of *Muhammad Iqbal Chattha v. The State* (1988 MLD 354), wherein Bench of Lahore High Court held as under:-

*"It was held in Shakir Hussain v. The State P L D 1956 SC (Pak) 417, that to establish a charge of criminal breach of trust the prosecution was not to prove only entrustment or dominion over property but also that the accused either dishonestly misappropriated, converted, used or disposed of that property himself or that he willfully suffered some other person to do so. The irregularity committed by the appellant*

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*in issuing the bank guarantee without securing hundred per cent margin amount could not have made him criminally liable unless it had been proved that he knew that the amount of the Bank guarantee was to be misappropriated.*

10. After cumulative study of the material available on record and in view of the case of *Muhammad Iqbal Chattha* (supra), I have come to an irresistible conclusion that the impugned judgment of learned trial Court does not appear to be in accordance with law and the learned trial court has committed serious illegality in convicting and sentencing the appellant. In such circumstances, instant appeal is hereby allowed and the impugned judgment dated 26.3.2016 is set aside and the appellant is acquitted of the charge.



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JUDGE