

ORDER SHEET
IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD.
 Cr.Acq.Appeal No.S-65 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on MA 2411/17
2. For orders on MA 2411/17
3. For katcha peshi.
4. For orders on MA 2413/17.

22-05-2017

Mr. Muhammad Imran, advocate for appellant. .
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ABDUL MAALIK GADDI, J- This Criminal Acquittal Appeal is directed against the judgment dated 22.02.2017 passed by the learned IVth-Additional Sessions Judge, Hyderabad, in Sessions Case No.760 of 2013 (Re-The State vs. Habibur Rehman & others), registered under Sections 420, 465, 471, 474, 468, 34 P.P.C at Police Station A-Section Latifabad, Hyderabad, whereby he has acquitted the respondents No.1 to 3 after full-dress trial. The appellant being aggrieved and dissatisfied with the impugned judgment has filed instant appeal.

2. Related facts are that on 27.06.2012 at 1545 hours complainant Muhammad Umar lodged FIR at police station A-Section Latifabad, Hyderabad, stating therein that the complainant is residing at House No.123 situated at Aslam Rajput Colony Unit No.07 Latifabad, Hyderabad. The slip of Entitlement / Fard-e-Haqiyat No.20216 of house No.123 is in the name of Mian

Muhammad son of Usman Ghani, who was grandfather of complainant and after his death, the complainant is sole, absolute and exclusive owner of the said house. The accused Habib-ur-Rehman is Pesh Imam of Masjid Khizra and he is residing in upper portion of said Masjid and on the basis of bogus Slip of Entitlement /Fard-e-Haqiyat; he has obtained a bogus CNIC bearing No.41304-5316079-5 from NADRA and also got PTCL connection No.3811066 by giving the address of complainant's house. On 04.6.2012 when the complainant came to know about this fact, he moved applications against the accused to concerned authorities as well as shown the bogus documents prepared by accused in respect of house No.123 to nek mards of the locality and during enquiry, he came to know that accused Habib-ur-Rehman in collusion with his sons accused Atiq-ur-Rehman and Abdul Tawab with intending to forcibly and illegally occupy the house of complainant had prepared forged and bogus Fard-e-Haqiyat of his house. Hence this FIR was lodged by complainant.

03. After framing formal charge by the learned trial Court, the evidence of complainant Muhammad Umer was examined as Exh.5, who during his evidence has produced application address to PS A-Section Latifabad, Hyderabad at exh.05/A, photocopy of CNIC of accused Habib-ur-Rehman at eXh.05/C, another photocopy of Fard-e-Haqiyat of house No.123 at exh.05-D,

photocopy of Fard-e-Haqiyat at Exh.05/E, CTC of order dated 26.06.2012 at Exh.05/F and FIR at Exh.05/G. PW-02 Nawab was examined at Exh.06, PW-03 SIP Muhammad Shahid Abbasi at Exh.07, PW-04 HC Muhammad Aslam at Exh.08, he produced mashirnama of arrest of accused Atiq-ur-Rehman at Exh.08/A, PW-05 Islam Khan at Exh.09, he produced mashirnama of place of incident at Exh.09/A and PW-06 SIP Nasir Nawab at Exh.10, he produced entry No.38 at Exh.10/A, letter addressed to Director Katchi Abadi at Exh.10/B and letter of Director Katchi Abadi at Exh.10/C. Thereafter prosecution side was closed vide statement at Exh.11.

04. It appears from the record that after closing the prosecution side, the statement of accused under Section 342 Cr.P.C were recorded, wherein the accused/respondents have denied all the allegation as leveled against them and stated that they are innocent and have falsely been involved in this case. The accused neither examined themselves on oath as required under Section 340(2) Cr.P.C nor produced any witness in their defence.

05. Learned trial Court after hearing the parties acquitted the accused / respondents.

06. Today, the case is fixed for admission / katcha peshi stage, as such learned counsel for appellant has been heard on the point of maintainability as well as on merit of this appeal.

07. The learned counsel for appellant contends that the impugned judgment is bad in law as well as on facts and is liable to be set aside and private respondents be convicted for the offence as alleged in the FIR. He further submits that the trial Court while passing the impugned judgment failed to consider the material aspect of the case and has not considered that the prosecution has examined 6 witnesses in this case and all the PWs have fully supported the prosecution version by producing unfettered documentary evidence, on the contrary the respondents No.1 to 3 even did not examine themselves on oath u/s 340(ii) Cr.P.C nor led evidence, but the learned trial Court has over-looked this important aspect of the case, therefore impugned judgment of acquittal is perverse and is based upon surmises and conjectures.

08. Perusal of record reflects that the evidence of PW-Nasir Nawab, investigating officer of the case as Exh.10 is/was very important as this witness has admitted in his cross-examination that FIR is lodged by the complainant after 23 days of incident and verification letter was issued by S.H.O A-Section police station which does not show the name of complainant or accused. He also

admitted that the genuineness or falseness of documents had not been shown in verification letter and even the name of person, who had applied for verification is not mentioned therein. Investigating Officer has clearly stated that during investigation of case no original document in respect of said property was recovered by him nor the complainant produced any written claim in respect of said property before him. He further admitted that accused Habib-ur-Rehman is Pesh Imam of Masjid Khizra, therefore in view of the above evidence I am of the view that the falseness and genuineness of documents and fraud allegedly committed by accused could not be established as no original and substantial document has been produced in respect of claim of complainant so also his allegation leveled against the accused person, hence failure on the part of complainant to produce any title document in his name regarding disputed house No.123, Muslim Rajput Colony Unit No.07 Latifabad, Hyderabad has created serious doubt in veracity and authenticity of allegation leveled by complainant against the accused persons.

09. Also I have perused the entire evidence as well as documents and have come to the conclusion that the trial Court has rightly acquitted the accused and the impugned judgment contains valid reasons for acquitting the accused, therefore does not requires any interference by this Court.

10. I have also observed that there is a clear distinction in appeal against conviction and appeal against acquittal. It is settled law that accused who has been acquitted in crime can claim double innocence, one at the pre-trial stage and the other he may earn on the basis of judgment of acquittal in his favour from the Court of competent jurisdiction. The competent Court in the instant matter has acquitted the accused after examining all material facts and law involved in this case, therefore the instant Criminal Acquittal Appeal is dismissed in limini alongwith listed applications.

JUDGE.