

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD.

Crl. Acq. Appeal No.S-81 of 2018.

Shamsuddin.Appellant.

Versus.

Abdul Aziz & others.Respondents.

Mr. Mashooq Ali Mahar, Advocate for the appellant.

Date of hearing and judgment: 19.06.2018.

JUDGMENT

IRSHAD ALI SHAH, J.-The appellant by way of instant criminal acquittal appeal has impugned judgment dated 07.04.2018 of learned Civil Judge / Judicial Magistrate-II, Jamshoro, whereby he has acquitted private respondent of the charge.

2. Facts in brief necessary for disposal of the instant criminal acquittal appeal are that, the appellant after seeking direction from learned Sessions Judge / Ex-Officio Justice of Peace, Kotri, lodged an FIR with PS: Jamshoro alleging therein that the private respondent started a scheme for distribution of motorcycles amongst its members against deposit of Rs.1000/- per month and he introduced 14 members to the private respondent, who continued with the scheme for about 37 months and then stopped it and then agreed in writing to refund Rs.4,37,000/-, which were paid to him on behalf of the members which were introduced to him by the appellant, but failed to refund such amount, on approach for return of money he threatened the appellant of murder, for that he lodged the FIR of the above said incident with police.

3. After usual investigation, the private respondent was challaned by the police to face trial for the above said offence before learned IInd Civil Judge/Judicial Magistrate, Jamshoro.
4. At trial, the private respondent denied the charge and the prosecution to prove it examined P.W-1 appellant produced through him carbon copy of FIR, agreement between him and the private respondent for return of the money, P.W-2 Aftab Ahmed, P.W-3 Mashir Moula Bux, produced through him mashirnama of incident and arrest of the private respondent, P.W-4 SIO/ASI Abdul Hameed, P.W-5 Mashir Arsalan and then closed the side.
5. The private respondent during course of his examination under section 342 Cr.P.C. denied the prosecution allegations by pleading innocence. He did not examine anyone in his defense or himself on oath in disproof of the prosecution allegation.
6. On evaluation of evidence, so produced by the prosecution, the learned Civil Judge / Judicial Magistrate-II Jamshoro acquitted the private respondent of the charge by way of judgment which is impugned by the appellant before this Court by way of instant criminal acquittal appeal, as stated above.
7. It is contended by the learned counsel for the appellant that it was the case of fraud, forgery and criminal intimidation, which the prosecution was able to prove by producing cogent evidence, yet learned Civil Judge / Judicial Magistrate, Jamshoro has recorded acquittal of the private respondent without any justification. By contending so he sought for admission of the instant acquittal appeal to its regular appeal.

8 I have considered the above arguments and perused the record.

9. It was stated by the appellant during course of his examination before learned Civil Judge / Judicial Magistrate-II, Jamshoro that he introduced 24 members to the private respondent for his scheme for distribution of motorcycles. By stating so he belied his FIR, wherein it was stated by him that he introduced 14 members to the private respondent for his above said scheme. Such inconsistency could not be lost sight of. The appellant has not disclosed the names of the members which he allegedly introduced to the private respondent for the alleged scheme. There is no disclosure as to when such scheme was launched. The appellant has not been able to produce receipts, which may prove that he actually made any payment to the private respondent on behalf of his members towards the above said scheme under the pretext that no such receipt was issued by the private respondent. It is not appealing to common sense that such huge payment was made without any receipt. The allegation of fraud and forgery indeed the prosecution was not able to prove against the private respondent beyond shadow of doubt. If for the sake of argument, it is believed that the agreement for refund of money in favour of the appellant was actually signed by the private respondent then subject to law it is to be enforced through civil Court having jurisdiction. The appellant apparently has attempted to convert civil litigation into criminal by making allegation of criminal intimidation. In these circumstances learned Civil Judge / Judicial Magistrate-II Jamshoro was right to record acquittal of the private respondent of the charge by extending him benefit of doubt by way of impugned judgment, which is not calling for interference by this Court,

as the same is neither arbitrary nor has caused miscarriage of justice to anyone.

10. In case of **State vs. Rasheed Ahmed**, which is reported at **NLR 2004 Cr. 286**, it was held by Hon'able Division Bench of Lahore High Court that the judgment of acquittal which is neither arbitrary nor causes miscarriage of justice would not warrant interference by High Court.

11. In case of **Muhammad Tassawur vs. Hafiz Zulqarnain and others**, which is reported at **PLD 2009 SC 53**, it was held by Hon'able Supreme Court of Pakistan that when an accused person is acquitted of the charge by the court of competent jurisdiction then he carried with him double presumption of innocence.

12. In view of above, the instant criminal acquittal appeal is dismissed in limine.

J U D G E

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