

IN THE HIGH COURT OF SINDH, KARACHI

***Crl. Acquittal Appeal No. 387 of 2017***

Mushtaq Ahmed S/o Nazeer Ahmed.....V/s.....The State and another

**Disposed of Matter.**

**For orders on M.A. No. 9118 of 2018**

**ORDER**

Date of hearing : 03-12-2018.  
 Date of Order : February, 2019.  
 Appellant : Mr. Khawaja Muhammad Azeem, advocate  
 Respondents : Mr. Siraj Ali Khan, Addl. PG.  
 None for Respondent No.2. : Nemo.

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1. Through this Review Petition under Section 561-A Cr.P.C, the learned counsel for the appellant namely Mushtaq Ahmed seeks Review of the judgment dated 20.8.2018, passed by this Court in the present Criminal Acquittal Appeal, whereby the same was dismissed on merits.

2. Necessary facts spelt out from instant Criminal Miscellaneous Application are that initially an FIR bearing No.207 of 2010 was got registered at Police Station Malir by one Ms. Tasleem Bibi Wd/O Muhammad Imran for offences under Section 302/34 PPC. It was alleged that as a counter blast of the above mentioned FIR, one of the accused of that FIR No. 207/2010 namely Muhammad Rafique Gujjar S/o Ali Muhammad had also got registered an FIR bearing No.25 of 2012 dated 09.03.2012 under Section 395 PPC at Police Station Malir Cantt., Karachi (dated of offence was 24.09.2011) against some of the prosecution witnesses of FIR No.207 of 2010 including Mushtaque Ahmed S/o Nazeer Ahmed, the appellant in the present appeal.

3. It revealed from record that the respondent namely Muhammad Rafique Gujjar firstly moved an application regarding

registration of case U/s. 395 PPC before SHO Malir Cantt. Karachi, but he did not lodge the FIR, thereafter the respondent Muhammad Rafique Gujjar S/o, Ali Muhammad submitted the Criminal Petition No.139 of 2011, under Section 22-A Cr.P.C before the learned Session Judge, Malir Karachi as such upon direction of learned Sessions Judge, FIR was lodged against the nominated accused persons including the appellant Mushtaq Ahmed. After registration of FIR bearing No.25 of 2012, investigation was completed and final Challan was submitted by the I.O under 'B' Class before the learned Vith Judicial Magistrate, Malir Karachi, who vide order dated 21.07.2012 approved the final report of the case in "C" Class instead of "B" Class. Subsequently, approval of such report in "C" Class was challenged by the three accused persons of FIR No.25 of 2012 before a Division Bench of this Court at Karachi through C.P. No.D-3785/2012, which was allowed by order dated 09.09.2014, whereby the impugned order dated 21.07.2012 passed by the learned Vith Judicial Magistrate was modified by this Court to the extent that the final report of the case was approved in Class "B" instead of Class "C".

4. Per appellant, FIR No.25 of 2012 was merely a counter blast of FIR No. No. 207 of 2010 in order to pressurize the prosecution witnesses not to give evidence in Criminal Case No.207 of 2010 against respondent No.2. Subsequently, the accused of FIR No.25 of 2012 namely Rustom Ali @ Dr. Abu-Eijaz Rustom filed Direct Complaint No.16 of 2016 (Old No.9 of 2015) before the Court of learned Vth Judicial Magistrate, Malir Karachi praying therein to pass an order directing police to submit Challan/Report to commence proceedings against respondent Muhammad Rafique Gujjar of Crime No.25 of 2012 as per provisions contained in Section 182 PPC. On 13.10.2014 SHO of Police Station Malir Cantt

submitted Challan under Section 182 PPC before the Court of Magistrate, stating therein that final report u/s.173 Cr.P.C. bearing Challan No.19/2012 for FIR No.25/2012 dated 09.03.2012 u/s. 395 PPC had already been submitted before the Court concerned, which has been approved by the Court with the orders that proceedings u/s.182 PPC be initiated and accordingly as per directions of the Court Challan report against respondent Muhammad Rafique Gujjar S/o, Ali Muhammad u/s. 182 PPC has been submitted for taking legal action. On the other hand the respondent had proceeded before the learned Additional Sessions Judge III, Malir Karachi for registration of private complaint in the same matter wherein FIR No.25/2012 was already lodged. He in his statement u/s.200 Cr.P.C. alleged that Police is favouring other party; that SHO of Police Station Malir without consent of complainant changed the Investigation Officer of the case with malafide intention and thus disposed of the matter under Class "B" and released the accused persons u/s. 169 Cr.P.C, that he has already submitted an application with DIG Investigation, Zone East, Karachi for transfer of investigation as he has no confidence upon the Investigation Officer but no action taken on such application. The learned Additional Sessions Judge III Malir, Karachi vide order dated 01.08.2016 in private Complaint No.02/2012 filed by the complainant Muhammad Rafique Gujjar passed order whereby dismissing the private complaint, the operative part of the above mentioned Court order is as under:-

***“In view of the above facts and circumstances of the case I am at the humble opinion in the light of above evidence that there is old enmity as well as family disputes between the parties and criminal litigation as well as counter cases are pending against the***

***parties, there is no sufficient ground for proceedings therefore, I see no substance in the private complaint in hand which is hereby dismissed as not maintained”***

5. Learned counsel for the appellant contended that the judgment passed by this Court in this appeal may be reviewed to prevent irremediable injustice and to forestall an illegality; that the mistake or error apparent on the face of the record; that while exercising inherent jurisdiction under Section 561-A, Cr.P.C. this Court has power to correct its own orders or to recall an erroneous order. The criminal Court can only review or recall their judgments and orders, if it is satisfied that the earlier order/judgment is either without jurisdiction or against the mandatory provisions of law and has been delivered inadvertently and out of oblivion of the provision of law and if such order/judgment is left intact, it would result in perpetration of manifest injustice. Reliance is placed on 2013 P.Cr. L.J. 518 (Balochistan); that a person, who intentionally registered a false and counter blast FIR, is liable to be punished under Section 182 PPC; that the above order sought to be reviewed suffers from serious error apparent on the face of record, particularly when the complainant/respondent No.2 have malafidely lodged false FIR No.25/2012 under Section 395 PPC only in order to pressurize and black mail the appellant and other witnesses and when proceedings under Section 182 PPC were initiated against the present respondent No.2, the police again submitted the report under "C" Class. It is question of millions that as to whether in proceedings under Section 182 Cr.P.C. there is need of any evidence or it is sufficient to say that false report under Section 154 Cr.P.C. given by the respondent No.2 at the time of lodging of FIR No.25/2012 against the applicant is sufficient.

6. While controverting the above submissions, learned Addl. P.G vehemently contended that the prosecution had produced witnesses before the learned trial Court, who recorded their statements on Oath, therefore, there was no lacuna on their part to prove their case.

7. None has appeared on behalf of the respondent No.2.

8. Heard learned counsel for the parties and have perused the material available on record minutely. It is well settled proposition of law that review is not admissible in judgment or order passed in Criminal proceedings except the rectification of error. Review has a very limited scope for recalling/set aside the earlier judgment or order passed by the Court in its Criminal jurisdiction, and neither the parties can be permitted for rehearing of the whole case nor merits of the case can be discussed again. It has been settled in ***Muhammad Zafarullah Khan v. Muhammad Khan*** case reported in ***PLD 1975 S.C 300***, by the Hon'ble apex Court that Review cannot be made a pretext for rehearing the whole case nor merits of the case can be discussed, only error on the face of record can be pointed out. Review cannot be sought as a matter of right and it can be refused even though ground for such action exists. In case of ***Rehmat Ali v. The State (1971 SCMR 513)***, the Hon'ble Supreme Court has observed that Review is not admissible in Criminal proceedings. In case of ***Abdul Haleem v. Raja Qurban Hussain (PLD 1965 Lahore 570)***, it was held that High Court is not competent to Review its order passed in Criminal jurisdiction.

9. I have gone through the provision provided under Section 369 Cr.P.C, which precludes Court of Criminal jurisdiction to alter its judgment after it has been written, signed and pronounced except to correct a clerical error.

10. Adverting to the case in hand, appellant has failed to point out any illegality, infirmity or error, if committed by this Court, while passing the impugned order, hence same does not call for any interference. The appellant could not contemplate any valid ground for consideration of Review Application. Consequently, instant Review Application stands dismissed being devoid of any legal substance and disposed of in the above terms.

Faheem/PA

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