

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Acquittal Appeal No.367 of 2018

Present. Mr. Justice Nazar Akbar-J.

Appellant No.1 : Khalid Shah,
Appellant No.2 : Adil Shah,
Appellant No.3 : Sahira Dildar,
through Mr. Aftab Ahmed Channa, Advocate.

Versus

Respondent No.1 : The State,
through Ms. Amna Ansari, Addl. P.G.

Respondent No.2 : Sohrab Chandio. (Nemo).

Date of hearing : **28.01.2019**

Date of Decision : **15.03.2019**

JUDGEMENT

NAZAR AKBAR-J. This Crl. Acq. Appeal is directed against the order dated **09.05.2018** passed by the learned XVth Judicial Magistrate, South Karachi in Criminal Case No.1922/2010 arising out of FIR No.107/2010 under Sections 420 PPC, whereby learned trial Court had acquitted accused/Respondents No.2 by extending him benefit of doubt.

2. Briefly, the facts of the case are that on **15.05.2007** complainant's friend Sohrab Khan (respondent No.2) came at his house and told him to give the documents of his house as surety of his father and son in the Banking Court. He told him to show the said documents before the Manager, NBP, FTC Building, Shahrah-e-Faisal, Karachi as such he gave original documents of his house to respondent No.2/accused. After some days respondent No.2/accused again came to him and told him that Bank Manager, NBP Akhtar Mehdi called at FTC Building for signature and obtained his signature and told him that the documents will be returned after 3/4

months but later on it came into knowledge of the complainant that the documents have been mortgaged in the bank against loan and in the said fraud and cheating bank Manager and respondent No.2/accused are involved.

3. After registration of FIR the investigation was carried out and the case was challaned against the accused before the competent Court of law where the charge was framed as Ex.2 to which the accused/ Respondent No.2 pleaded not guilty and claimed trial. Prosecution in support of charge, examined five witnesses. The statement of accused under Section 342 Cr.P.C was recorded as Ex.10, wherein he claimed to be innocent but did not produce witnesses in his defense nor examined himself on oath.

4. On completion of trial and hearing learned counsel for the parties, the learned trial Court passed the impugned judgment whereby accused/respondents No.2 was acquitted under Section 245(i) Cr.P.C by extending him benefit of doubt, therefore, the appellants preferred this acquittal appeal against the said order.

5. On **28.01.2019**, after hearing learned counsel for the appellants and learned Additional P.G, the counsel for the appellants was directed to file written arguments which he filed on **06.02.2019**. I have heard learned counsel for the appellants/Complainant and learned Addl. P.G Sindh for the State while as per record, nobody was appearing on behalf of Respondents No.2. However, perused the written arguments filed by the counsel for the appellants and material brought on record as well as scanned the prosecution evidence with the assistance of learned counsel for Appellants/Complainants as well as learned Additional P.G.

6. Learned counsel for the applicant despite repeated queries from the Court could not point out even a single line from the evidence of any substance to connect respondent No.2 with the criminal offence under Section 420 PPC. From the own showing of the complainant, he claimed to have been cheated sometimes in May, 2007 and he has lodged FIR in 2010. He has not offered any explanation for his failure to lodge the FIR with delay of more than three years. Be that as it may, even he admits that he has himself given original documents to respondent No.2/accused. Therefore, no case was made out and the trial Court has rightly acquitted respondent No.2/accused.

7. It also appears that the prosecution case against the respondent No.2/accused suffers from various doubts and dents and raise questions into the veracity of the prosecution case and are sufficient to hold that respondent No.2 was entitled to be extended benefit of such doubt. In such situation, the impugned judgment of acquittal being speaking and well-reasoned, does not warrant any interference.

8. In view of the above facts and discussion, instant Criminal Acquittal Appeal is dismissed alongwith pending applications.

JUDGE

Karachi
Dated:15.03.2019

Ayaz Gul