

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Acquittal Appeal No.108 of 2015

Date	Order with signature of Judge
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Present: Mr. Justice Nazar Akbar

Appellant : Shaikh Muhammad Amir, through
Mr. Ikhtiar Ali Channa, advocate.

Versus

Respondent No.1 : The State
Ms. Seema Zaidi, D.P.G.

Respondent No.2 : Fahad Abbas S/o Aziz Abbas
Respondent No.3 : Imran Ghaffar S/o Abdul Ghaffar
Respondent No.4 : Muhammad Ali S/o Wali Muhammad
through M/s Abid Naseem and Mahmood Ali
advocates.

Respondent No.5 : S.M Waseem S/o Shaikh Muhammad Shafi.

Respondent No.6 : VII Judicial Magistrate & Civil Judge, East,
Karachi.

Date of hearing : **01.04.2019**

Date of decision : **01.04.2019**

JUDGMENT

NAZAR AKBAR, J:- This Criminal Acquittal Appeal is directed against the Judgment dated **28.03.2015** passed by the learned VII-Judicial Magistrate, East Karachi on two applications under Section 249-A Cr.P.C separately filed by Respondents No.2 to 5 in Criminal Case No.4837/2012 arising out of FIR No.921/2012 registered at P.S Korangi Industrial Area, Karachi under Sections 452/408/34 PPC, whereby learned trial Court had acquitted the accused/ Respondents No.2 to 5 under Section 249-A Cr.P.C.

2. Brief facts of the case are that on 25.10.2012 at about 0030 hours, the appellant/complainant lodged FIR stating therein that he is working as a Chief Executive in FDM Private Ltd., and their company supply different items to the shops. Fahim, Shahid Imran and Nihal Yousuf are also employees in the said company and the said Fahim was dealing with receiving and depositing cheques of the company. On 21.10.2012 appellant/ complainant received a phone call that on 19.10.2012 recovery team consisted of eight/nine persons of KASB Bank forcibly entered into company, some of them known to be Fahad, Muhammad Ali and Imran Ghaffar/ Respondents No.2 to 4 who demanded keys of lockers and on refusal they issued threats of dire consequences and took cheque books of the company. On 22.10.2012 complainant went to company where he checked the details and found that cheque books of different Banks, five seals of FDM Company and some important documents were missing. Complainant raised a doubt that recovery team of MODARBA of KASB Bank consist upon accused/Respondents have taken away the articles with collusion of Waseem/Respondent No.5. Therefore, appellant/complainant registered FIR against the accused persons.

3. After usual investigation, challan was submitted in the trial Court and formal charge was framed against accused persons. They pleaded not guilty and claimed to be tried. During trial, two separate applications under Section 249-A Cr.P.C were filed on behalf of Respondents/accused.

4. Learned trial Court after hearing learned counsel for the parties, acquitted accused/ Respondents No.2 to 5 by order dated **28.03.2015**. Therefore, the appellant/ complainant has filed the instant Criminal Acquittal Appeal.

5. I have heard learned counsel for the parties as well as learned DPG for the State and perused the record.

6. Learned counsel for the appellant contended that the impugned order is based on surmises and conjectures and contrary to law and documentary evidence produced by the appellant. He further contended that the trial Court has not applied the judicious mind and passed the impugned order in a hasty manner without considering the evidence of eye witnesses, therefore, the impugned order is liable to be set aside.

7. Learned D.P.G. representing the State supported the impugned judgment. She contended that the impugned judgment has been passed in accordance with the law.

8. The perusal of impugned order shows that the dispute between the parties was of civil nature which was converted into criminal proceedings. In this context the observations of the trial Court in the impugned judgment are well reasoned which are reproduced below:-

From perusal of record, it appears that alleged incident took place on 19.10.2012 whereas FIR was registered on 25.10.2012 means after the delay of about six days as such no explanation has been furnished on such account. That there is civil litigation pending against the complainant party and no criminal liability is made out by filing instant FIR against the present applicants/accused persons. The guidelines as sent out by the superior Courts show that where both civil and criminal remedies can be availed, civil proceedings should be given preference and allowed to decide such disputed facts. Further from the record it is very much clear that the company of complainant based on director(s), requested KASB MODARBA to sanction them financial facilities/loans, as such on 20.07.2011 and 12.06.2012, KASB MODARBA, approved two finance facilities of Rs.50,000,000/- (rupees Fifty Million) and Rs.8,000,000/- (rupees Eight Million) respectively, in their favor, which were accepted and acknowledged with all terms of facility letters. Moreover, said company entered into two agreements with KASB MODARBA.

Further the ingredients of sections 408 P.P.C are missing, as the applicants/accused persons are neither servants nor clerks of the complainant but they are/were the employees of KASB MODARBA, as such said section 408 P.P.C., it is clear that where the accused is not a clerk or servant of complainant, the said section will not apply. Moreover, the ingredients of entrustment of property are missing; therefore, question of criminal breach of trust does not arise. Further initially section 382 P.P.C., was not inserted in the FIR but the same was added in charge sheet, thereby made departure from alleged sections referred in first document viz FIR by police through complainant, as such said charge is not sustainable under the law. Moreover, said charge is not attract while considering the statements of P.W's Zakir and Nihal Yousuf, under section 161 Cr.P.C. who stated that KASB MODARBA team sued to come in said company. It is pertinent to point out that section 452 P.P.C., has been deleted while submitting of charge sheet. Even otherwise, the ingredients for establishing of section 452 P.P.C. are missing on the ground that the same is to be applied for house trespass whereas in the instant matter the alleged place of incident is company, which was not used for human dwelling. In fact, it is a public place. Moreover, neither any weapon was allegedly carried in the hand of any accused at the time of alleged incident, from which it may ascertain that accused had made preparation for causing hurt or assault or causing wrongful restraint to any person, as such mere entering into the company would not constitute the offence punishable under section 452 P.P.C. In such circumstances, charge prima facie appears to be groundless and there is no probability of convictions of applicant/accused persons.

The above facts before the trial Court were enough for acquittal of the Respondents/accused and the trial Court has relied on certain judgments of superior Court mentioned in the impugned order.

9. In view of the above, instant Criminal Acquittal Appeal was dismissed by short order dated **01.04.2019** and these are the reasons for the same.

JUDGE

Karachi
Dated: 02.04.2019

Ayaz Gul