

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Acquittal Appeal No.443 of 2017

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

Appellant : Safdar Baig, present in person.

Versus

Respondent No.1 : The State
Ms. Rubina Qadir, A.P.G.

Respondent No.2 : Kashif Ali Khan. (Nemo).

Respondent No.3 : IVth Judicial Magistrate, Karachi Central.

Date of hearing : **26.03.2019**

Date of decision : **05.04.2019**

JUDGMENT

NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the order dated **12.09.2017** passed by the learned IV-Judicial Magistrate, Central Karachi on application under Section 249-A Cr.P.C filed by the accused/respondent No.2 in Criminal Case No.606/2015 arising out of FIR No.26/2015 registered at P.S Yousuf Plaza under Sections 489-F/408/419/420/34 PPC, whereby learned trial Court had acquitted the accused/Respondent No.2 under Section 249-A Cr.P.C.

2. Brief facts of the prosecution case are that accused/ Respondent No.2 in collusion with co-accused namely Arif Iqbal, Afaq Ali Khan and Muhammad Wafaq submitted three cheques of Bank Smith, Water Pump branch amounting to Rs.210,000/- each. All the cheques belonged to one absconded accused Fahad Ahmed and he as

account holder of these cheques. Subsequently on presentation these cheques were bounced, therefore, the appellant/complainant lodged FIR against the accused under Section 489-F, 408 and 420 PPC.

3. After usual investigation, challan was submitted in the trial Court and formal charge was framed against accused persons namely Wafaq Ahmed, Muhammad Afaq, Waseem Anwar Alam, Muhammad Babar, broker, Kashif Ali Khan (Respondent No.2/accused), Arif Iqbal, Zubair Hussain and Fahad Ahmed. Accused persons Zubair Hussain and Fahad Ahmed have been declared against them. They pleaded not guilty and claimed to be tried. During evidence stage complainant entered into compromise with accused persons namely Muhammad Afaq, Wafaq Ahmed and Muhammad Babar, broker, therefore, they had been acquitted under Sections 345(ii) and (vi) Cr.P.C. Thereafter the matter was fixed for procurement of witnesses by prosecution against accused Waseem Anwar Alam, meanwhile application under Section 249-A Cr.P.C was filed on behalf of Respondent No.2/accused.

4. Learned trial Court after hearing learned counsel for the parties, acquitted accused/ Respondent No.2 by order dated **12.09.2017**. Therefore, the appellant/ complainant has filed the instant Criminal Acquittal Appeal.

5. On **26.03.2019** when this case was fixed before this Court for hearing, the appellant appeared in person and submits that he has engaged some other counsel but he is not in attendance, however, since this case is pending since 2017, therefore, judgment was reserved and the appellant was directed to file written arguments but he has not filed the same till date.

6. I have heard learned APG for the State and perused the record.

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:-

Further it is observed by this Court that complainant is only interested for the recovery of Rs.28,060,815/- from accused persons. And for this complainant had already entered into compromise with other three co-accused U/s 345(ii) & (vi) Cr.P.C. In spite of last chance to procure prosecution witness complainant is deliberately trying to linger on this criminal case for the sake of recovery from accused persons. Controversy between parties may be not fulfilling terms of contract executed between them. Even on admitted facts no offence could be made out against accused person as dispute was entirely of civil nature which had been converted into criminal proceedings. Proceeding before any Court on the basis of any FIR in question is nothing but an abuse of process of law and the case would not end in conviction. Reliance is placed on 2014 MLD pg.524, Sindh.

The above evidence before the trial Court was enough for acquittal of the Respondent and the trial Court has relied on a judgment of superior Court mentioned in the impugned order.

9. In view of the above observations, instant Criminal Acquittal Appeal is dismissed.

JUDGE

Karachi
Dated:05.04.2019

Ayaz Gul