

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Acquittal Appeal No.154 of 2018

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

Appellant : Muhammad Safdar Baig,
Mr. Shaikh Jawaid Mir, Advocate.

Versus

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

Respondent No.2 : Arif Iqbal,
Respondent No.3 : Syed Mustafa
Respondent No.4 : Saif Bari
Respondent No.5 : Kashif Ali Khan
Respondent No.6 : Iqbal Ahmed
Respondent No.7 : Mohammad Babar
Respondent No.8 : Waseem Anwar Alam
Respondent No.9 : Fahad Ahmed
Respondent No.10: Ina'am-ul-Haq
(None present for Respondents No.2 to 10).

Respondent No.11: IXth Judicial Magistrate, Karachi East.

Date of hearing : **19.04.2019**

Date of decision : **10.05.2019**

JUDGMENT

NAZAR AKBAR, J: - This Crl. Acq. Appeal is directed against the Judgment dated **20.01.2018** passed by the learned IX-Judicial Magistrate, East Karachi in Criminal Case No.54/2016 arising out of FIR No.587/2017 registered at P.S Gulshan-e-Iqbal, Karachi under Sections 489-F, 506, 408, 420 r/w 34 PPC, whereby learned trial Court had acquitted the accused/Respondents No.3 to 5, 7 and 8 by extending them benefit of doubt. The accused/Respondents No.2 and 6 were convicted under Section 245(2) of the Cr.P.C for the offences

under Section 408 and 489-F PPC, however, they were sentenced probationary and were released under probation for a period of one year while accused/Respondents No.9 & 10 were declared absconder.

2. Brief facts of the case are that the appellant/complainant Muhammad Safdar Baig, Admin Manager, White Pearl Rice Mills, Hawks-Bay Road, Maripur, Karachi lodged FIR at P.S Gulshan-e-Iqbal, Karachi stating therein that Arif Iqbal, (Respondent No.1), who was working as sales manager in the company, had sold out oil, ghee and rice in collusion with the other accused/Respondents and caused heavy loss of millions of rupees to the company. The accused/ Respondent No.1 supplied food items i.e. rice, oil and ghee to the other accused/ Respondents by showing them as connected with different companies, who issued cheques in the name of the company which were bounced. Out of which, one cheque No.CA-2113102 amounting to Rs.9,82,781/- was issued by the accused/Respondent No.6. The complainant contacted the accused/ Respondents on which accused/Respondents namely Arif Iqbal, Kashif Ali Khan and Afaq Ahmed executed Iqarnama, whereby they agreed to return the outstanding amount of the company but later on they shown their connection with Al-Rehman Traders, Evergreen Traders and Z.A Traders and also issued threats of dire consequences to the complainant, therefore, the complainant lodged the FIR against all the accused/ Respondents.

3. On completion of investigation, charge sheet was filed in the trial Court against accused/Respondents No.2 to 8 while accused/ Respondent No.9 and 10 were declared absconder. Formal charge was framed against accused persons to which they pleaded not guilty and claimed to be tried. The prosecution examined seven PWs and

thereafter the prosecution closed their side for evidence. When statements of respondents/ accused were recorded under Section 342 of the Cr.P.C, they again denied the allegation as leveled against them and prayed for justice. However, none of the accused persons have examined themselves on oath nor led any evidence in their defence. Then after hearing learned counsel for the parties, learned trial Court acquitted accused/ Respondents as stated above. Therefore, complainant/ appellant has filed the instant Criminal Acquittal Appeal against the said acquittal order. It is pertinent to mention here that accused/Respondents No.9 and 10 were declared absconder and were not acquitted by the trial Court but the appellant/ complainant had also impleaded them as Respondents No.9 and 10 in the instant Criminal Acquittal Appeal and such objection was also raised by the office but learned counsel for the appellant has wrongly replied the said objection that *“they have been sentenced probationary and subsequently they will be released”*, as in the impugned judgment it is clearly observed by the trial Court in last three lines of the judgment that *“Needless to mention here that the case of the absconding accused persons namely Fahad Ahmed and Ina’amul Haq (Respondents No.9 and 10) is hereby kept on dormant file till their arrest or surrender before this Court.”*

4. I have heard learned counsel for the appellant as well as learned DPG for the State and perused the record.

5. Learned counsel for the appellant/complainant contended that the impugned judgment passed by the trial Court is based on mis-reading and non-reading of evidence as the accuse/ Respondent No.2 had supplied food items to the other accused/ Respondents No.3 to 10 and in that respect Respondent No.6 had issued a cheque of

Rs.9,82,781/- to the company which was dishonored, therefore, the trial Court has wrongly passed the impugned judgment and the same is liable to be set aside.

6. 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.

7. The perusal of impugned judgment shows that the evidence required for bringing the case within the ambit of Section 489-F PPC was not available. Learned counsel for the appellant/complainant was directed to satisfy the Court through evidence that the ingredients of an offence under **Section 489-F** was proved. Whether the cheque was issued towards payment of loan or “fulfillment of an obligation” by the respondents? In this context the observations of the trial Court in the impugned judgment are well reasoned which are reproduced below:-

*It is the case of the prosecution that all the accused persons in collusion of the accused Arif Iqbal committed fraud, cheating and caused heavy loss of millions (Crores) to the company but the prosecution has failed to prove its case against the remaining accused persons namely Kashif Ali Khan, Saif Bari, Muhammad Babar, Waseem Anwar Alam, Syed Mustafa beyond reasonable doubt. It is matter or record that the accused Kashif Ali Khan was signatory of the Iqrarnama but he has no direct connection with the company and the connection of the accused Kashif Ali Khan, if any, was through the accused Arif Iqbal. Therefore, in my considered view, the breach of the terms and conditions of the Iqrarnama by the accused Kashif Ali Khan only amounts to breach of the contract and not the criminal breach of trust. **In such circumstances, the matter between the company and the accused Kashif Ali Khan could be determined by the Civil Court exhaustively in a Civil Suit.** Reference in this respect may be made to the Case of **Shaikh Muhammad Taqi v. The State (1991 P.Cr.L.J 963)** (authored by his Lordship as he then was Mr. Justice Qaiser Ahmed Hamidi). As observed supra*

*in the reasons of Point No.2 that the role of the accused Arif Iqbal as employee (Sales Manager) was totally different as that of the accused Kashif Ali Khan. Moreover, the prosecution has not produced a single document to show connection of the accused persons namely Saif Bari, Muhammad Babar, Syed Mustafa and Waseem Anwar Alam with fraud and cheating with the company, nor these accused persons are signatories of the Iqrarnama. **It is also matter of record that the accused persons namely Kashif Ali Khan, Saif Bari, Muhammad Babar, Waseem Anwar Alam and Syed Mustafa had not issued a single cheque to the company,** therefore, there is nothing on record to connect these accused persons with the commission of the offence. Consequently, the point No.3 is replied as not proved.*

The above observations of the trial Court for acquittal of the respondents are also based on several judgments of superior Courts specifically mentioned in the impugned judgment. The learned counsel for the appellant has not even suggested that the case law referred by trial Court was not relevant in the case of respondents.

8. Beside the above legally and factually correct findings, the appellant has so negligently filed the instant Acquittal Appeal that even convicted accused and absconders have also been impleaded as if they were also acquitted by the impugned judgment.

9. In view of the above, the impugned judgment does not call for any interference by this Court, therefore, instant Criminal Acquittal Appeal is dismissed.

JUDGE

Karachi
Dated:10.05.2019

Ayaz Gul