

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Acq. Appeal No.538 of 2017

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of main case.

19.04.2019

Mr. Abdul Malik Raja, advocate files power on behalf
of the appellant.
Ms. Seema Zaidi, DPG for the State.
Mr. S. Mahmood Ali Rizvi, advocate for Respondent No.2.

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NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the judgment dated **16.10.2017** passed by the IVth Judicial Magistrate West, Karachi in Criminal **Case No.988/2017** whereby the trial Court has acquitted Respondent No.2.

2. Brief facts of the prosecution case are that complainant Muhammad Hussain lodged FIR at PS Docks, wherein it was averred by the complainant that on 07.3.2017 at 1900 hours, he anchored his fiber boat at Kala Pani, Fishery, Karachi and went to his house. On 08.3.2017 at 0900 hours, when he reached aforesaid place, his fiber boat named Al-Yousuf bearing No.14362/B was missing. The complainant came to know that a person namely Shah Alam s/o. Ashraf Ali has stolen boat due to some financial dispute with the complainant. Hence, this FIR was registered.

3. I have heard the learned counsel for the appellant and Respondent No.2 and learned DPG and perused the record.

4. The perusal of the impugned order shows that the learned trial Court has rightly observed that:-

.....“Complainant from outset as evident
from FIR has misstated that fact that accused

Shah Alam had stolen his launch while it was at the time of bail application where counsel for accused assisted court while furnishing series of ownership documents vested under the title in the name of none other than Shah Alam (accused) which immediately also became admitted by complainant himself since noticeably, there also lies no suit for cancellation if the same documents were ought to be believed as forged in relation to boat No.14362/B "Al-Yousuf" which even till date has remained vested under ownership of accused Shah Alam upon documentary basis, evidently. Hence, same documents at the time of bail application were deemed substantial, however it was also admitted on the other hand that the same launch was earlier sold to complainant Muhammad Hussain by accused Shah Alam in lieu of total Rs.16,00,000/- an agreement which was also placed on record which featured a condition that in case complainant Muhammad Hussain commits a default towards payable amount of Rs.8,00,000/- remembering half of the total amount was only received by accused Shah Alam and other half had remained liable, hence complainant Muhammad Hussain would be liable for action in accordance with law.

Therefore, it can safely be held that complainant in collusion with I.O had concealed the real facts from the outset and went to exploit forum of criminal prosecution against the matter failing under ambit of civil litigation notwithstanding the criteria of dishonestly coupled with requisite mensrea which is essential to be established against nominated accused behind the idea of conviction in cases pertaining to 379 PPC as envisaged by 378 PPC. However, fact unveiled at the forum of Hon'ble VI Sessions Judge West are further sufficient to derail current case while they conveniently does enough to expose complainant against potential of malicious prosecution since the case through the perspective of FIR contents largely in view of accused Shah Alam's vindicated bona fide has turned out to be a false one.

Where property is removed in the assertion of a contested claim of right, however, unjustified that claim may be, the removal hereof does not constitute theft. [PLJ 1996 Lah, 730] ".....

The above observation of the trial Court for acquittal of respondent No.2 is unimpeachable as the appellant was neither owner nor he was given possession of boat by the accused to him.

5. In view of the above, no case is made for interference in the impugned judgment by this Court, therefore, this Crl. Acq. Appeal is dismissed.

JUDGE

SM