

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Acq. Appeal No.60 of 2018

Date	Order with signature of Judge
------	-------------------------------

Present: Mr. Justice Nazar Akbar

Appellant : Kausar Ahmed
Through Mr. Abdul Wahab Baloch, advocate

Respondent No.1 : Muhammad Imran Ansari. (Nemo)

Respondent No.2 : The State
Through Ms. Rahat Ahsan, Addl. P.G

Date of hearing : 31.07.2018

Date of decision : 16.08.2018

JUDGMENT

NAZAR AKBAR, J:- This Crl. Acquittal Appeal is directed against the order dated **28.11.2017** whereby XIX- Civil Judge and Judicial Magistrate, Karachi East has acquitted accused/Respondent No.1 in Crl. Case No.2023/2015 arising from FIR No.369/2015 under Sections 448, 420, 468, 471 and 34 PPC, registered at P.S Ferozabad, Karachi.

2. Brief facts of the case are that on 02.2.2015, complainant came to know that some unknown persons have illegally occupied the roof/ paint house of the building on plot No.829-C located at PECHS Karachi On inquiry, the complainant came to know that one person namely Muhiyuddin alongwith a woman has occupied the property in question. When complainant inquired from Muhiyuddin about his possession, Muhiyuddin said that the property in question was sold to him by Imran of M/s Imran Estate and Iqbal Ghazi. When complainant contacted with Iqbal Ghazi, Iqbal Ghazi requested for

time of some days and promised that he will get the property in question vacated. On 20.4.2015, Complainant asked Iqbal Ghazi on phone call on which he (Iqbal Ghazi) refused to give the possession of property in question. When the complainant approached police, the Assistant Superintendent of Police Ferozabad Sub-Division East Zone Karachi, appointed ASI Muhammad Wasim Anis for enquiry who submitted a report whereupon a case was registered against Respondent No.1.

3. I have heard learned counsel for the appellant as well as Additional Prosecutor General and perused the record.

4. Learned counsel for the appellant has contended that sufficient evidence was available on the record to convict the accused/ Respondent No.1 but the trial Court has failed to appreciate the same. However, I have directed him to read the impugned order which has compelled the trial Court to appreciate that there were doubts in the prosecution story. The following observations of the learned Judge from the impugned order are sufficient to dismiss this Crl. Acquittal Appeal, as the ingredients of Section 448 PPC have not been made out:

“From the perusal of the FIR, it appears that no specific date and time is mentioned in its contents in respect of commission of house trespass and forgery of documents. Such fact was also admitted by the I.O Muhammad Faisal Khan, as he (I.O Muhammad Faisal Khan) stated in his cross that no time of incident is mentioned in the FIR in this case. I.O Muhammad Faisal Khan further admitted in his cross that no any date of house trespass is mentioned in the case on which Imran Ansari had occupied the property in question. I.O Muhammad Faisal Khan further admitted in his cross that no any witness except the complainant is associated in this case who could say that accused Imran Ansari has illegally occupied the property in question. I.O Muhammad Faisal Khan stated in his cross that complainant

had provided documents of property to him for investigation but he (I.O Muhammad Faisal Khan) further stated in his cross examination that no document regarding first floor, second floor, third floor and paint house were available in the documents which were provided by complainant to him for investigation”.

5. Learned trial Court has relied on the evidence of the complainant himself and observed that complainant has not produced any witness of building regarding the incident as alleged in the FIR. It is pertinent to note that out of eight prosecution witnesses, three are private witnesses namely Jahangir Shaikh, Syed Abdul Saeed and Abdul Mateen but they have not appeared in Court despite issuance of bailable warrants. The complainant claimed that the property in question was owned by his late father namely Hameedullah. The complainant admitted in his cross that there are other 6 legal heirs of Hameedullah but except the complainant none of them has made any complaint or is even associated as witness in this case. It has also been observed by the learned trial Court that complainant during his cross examination admitted that the disputed sublease is of the year 2014 and he has lodged the FIR in the year 2015 which shows that the dispute is of civil nature. After discussing the evidence for acquittal of the accused, learned trial Court has relied on the cases reported as Tariq Pervez vs. The State **(1995 SCMR 1345)**, Habib vs. The State **(2014 P.Cr.L.J 1067 [Sindh])** and Muhammad Hanif alias Pocho vs. The State **(2014 P.Cr.L.J 928)**.

6. In view of the above stated facts, the prosecution story as discussed in the impugned order was not free of doubts, therefore, I do not find any merit even for repeating the notice to the Respondents. In dismissing the instant CrI. Acquittal Appeal, I rely on the judgment of the Hon'ble Supreme Court of Pakistan in the

case of State vs. Abdul Khaliq reported in **PLD 2011 Supreme Court**

554 and relevant observation is as under:-

“The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the, findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the courts below. Supreme Court observed that it was expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”

7. In view of above legal as well as factual position, instant Crl. Acquittal Appeal is dismissed alongwith pending applications.

JUDGE

Karachi

Dated: 16.08.2018

Ayaz Gul/PA