

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 Crl. Revision Application No. 49 of 2017

Date Order with signature of Judge

1. For hearing of cases.
2. For orders on M.A. No. 2332/2018.
3. For orders on M.A. No. 2333/2018.
4. For hearing of M.A. No. 2089/2018.
5. For hearing of M.A. No. 2090/2018.

Date of hearing **15.03.2018**

Mr. Mohammad Yousuf Sheikh, advocate for the applicant alongwith applicant.
 Attorney/father of complainant, namely Rasool Bux Memon.
 Mr. Muhammad Iqbal Awan, Addl. P.G. Sindh.

KAUSAR SULTANA HUSSAIN, J:---- This Criminal Revision No. 49 of 2017 under section 435, read with Section 439-A Cr.P.C is directed against the order dated 16.03.2017 passed by the learned Ist Additional Sessions Judge South, Karachi in Criminal Appeal No. 02 of 2015 , whereby maintaining the sentence has been challenged awarded to the applicant by the learned Xth Judicial Magistrate South, Karachi in Criminal Case No. 2344 of 2011, whereby the learned trial Court convicted the applicant under Section 420 PPC and sentenced him to suffer imprisonment for eighteen months with benefit of section 382-B Cr.P.C and further fine of Rs. 10,000/- and in case of failure to pay fine to suffer simple imprisonment for one month. The learned trial Court acquitted co-accused Abdul Hafiz son of M. Ali from the charge of offences mentioned above.

2. The facts necessary for the disposal of the instant Criminal Revision Application are that the complainant Mst. Najma Memon got booked a flat on 4th floor, in Shah Jalali Apartment, Chandia Village, situated on plot No. E-29/7, Clifton Cantonment Board Area Karachi and paid total sale consideration of Rs. 5,25,000/- on installment basis to builder Babu Lal, applicant/convict, against an agreement dated 17.07.2008. On completion of construction of said apartment, applicant/convict did not hand over possession of the said flat to the complainant. When the complainant alongwith her father visited the said flat, she found a person

in possession of the said flat. On inquiry, the said person disclosed his name as Vinod, and further informed that he is in possession of the said flat on rental basis of Rs. 7,000/- per month. After that the complainant demanded for handing over the possession of the flat from the applicant/convict, but he refused to do so, on one pretext or another and also extended threats to her father, hence this F.I.R.

3. The applicant/convict after registration of the F.I.R. obtained interim pre-arrest bail and subsequently, entered into another agreement dated 26.5.2010, whereby it was agreed by the applicant/convict that in order to compensate, he will provide another flat to the complainant in the said project on 6th floor. As a result of said agreement the learned IIIrd Additional Sessions Judge, South, Karachi has confirmed the pre-arrest bail of the applicant/convict, vide order dated 26.05.2010. Since the applicant/convict did not fulfil the terms and conditions of the said agreement, therefore, the confirmation order of pre-arrest bail of the applicant/convict was re-called by the learned Sessions Court, vide order dated 08.03.2011 and he was arrested and subsequently challan was submitted before the learned trial Court. After completion of trial, the applicant/convict was awarded conviction under Section 420 PPC by the learned trial Court with benefit of Section 382-B Cr.P.C and fine of Rs. 10,000/- and one month further simple imprisonment in case of his failure to pay fine. The said conviction was maintained by the learned Sessions Court.

4. Through filing present Criminal Revision Application, the applicant/convict challenging the said conviction on the ground that the impugned judgment dated 13.05.2015 passed by the learned Xth Judicial Magistrate, Karachi South is not maintainable and liable to be set aside and the applicant is entitled to be acquitted; the learned trial Court did not appreciate evidence in accordance with law, and the same was not given due consideration, as such the evidence requires re-appraisal by this Court; that the evidence produced by the complainant is inconsistent, conflicting and contradictory but also untrustworthy, dishonest, fabricated and false, and as such prosecution has miserably failed to establish case against the applicant, and the conviction awarded by the learned Judge to the applicant, on the basis of above stated

evidence is bad in law; that there are so many contradictions in the depositions of the prosecution witnesses; that during the trial, the learned trial Court has misread and misinterpreted the documents and evidence available in the case, thus it is biased judgment; that the learned appellate court has also not considered the arguments advanced by the defence counsel; that the applicant is old age person and is patient of cervical spine and he was under medical treatment in Agha Khan University Hospital, Karachi, therefore, he prayed to set aside the conviction and sentence awarded by the learned trial Court and further the above Revision Application may be allowed, which is in the larger interest of justice.

5. On the other hand, the learned Addl. Prosecutor General, Sindh for the State has supported the concurrent findings of both the Courts viz; trial and appellate and further argued that prosecution witnesses led corroborative evidence and were duly cross-examined by the learned defence counsel, while the applicant/convict neither led his own evidence on oath nor produced defence witnesses in support of his claim of innocence.

6. I have carefully considered the arguments advanced by both the side and have also perused the impugned judgment and order and entire material available on record.

7. In instant matter this Court being Revisional Court has jurisdiction to correct the error resulting from non-reading, misreading of evidence or when the Courts below failed to exercise jurisdiction vested in them. In support of the claim of the complainant, prosecution has produced four witnesses, who were examined by the prosecution and cross examined by the learned defense counsel. The complainant and her father have been examined as PW-1 and PW-2 respectively and they led corroborative evidence and their evidence could not be shuttered while cross examining them by the learned defence counsel. The PW-3, namely, Manooj Kumar was also examined by the prosecution, who was the occupant of the flat in question, which was purchased by him from co-accused Abdul Hafiz Chandio (now acquitted). PW-4, the I.O of the case has also led corroborative evidence before the learned trial

Court. It is also available on record that before learned Additional Sessions Judge, Karachi South, while Court was hearing of pre-arrest bail application of the applicant/convict executed an agreement with the complainant, wherein he undertook that he will provide another flat in the same project as alternate of booked flat of the complainant. In my view execution of an agreement during judicial proceedings before the Court of law with regard to redressal of the grievance of the complainant amounts to admission of the claim of the complainant. It is also on record that on the basis of said agreement, he got his bail before arrest order confirmed, but subsequently he retracted from his promised agreement and did not provide alternate flat. However, as per agreement, the applicant/convict has reimbursed Rs. 50,000/- out of Rs. 1,25,000/- as agreed. It is well settled principle of law that state of mind to be ascertained from the conduct of the accused and the surrounding circumstances, (1969 SCMR 564). In the instant case, the applicant/convict had retracted from his agreement for two times and by cheating and fraud he received entire amount of the property in question but failed to deliver its possession to the complainant. Provision of section 420 PPC had attracted when applicant/convict had cheated complainant and dishonestly induced her to deliver the possession of property in spite of receiving entire amount in this regard. While reading the entire record available on the file, it could be concluded that two Courts below while deciding the matters have committed no misreading, non-reading of evidence and justifiably exercised jurisdiction vested in them, hence the present Criminal Revision Application is liable to be dismissed alongwith listed applications. Order accordingly.

Dated: 09th May, 2018.

J U D G E