

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.S- 77 of 1997

Appellant: Zulfiqar Ali son of Abdul Rasheed,,
Through Mr. Ghulam Nabi Jarwar, Advocate

Complainant: Through Mr. Imam Bux Baloch , Advocate
(absent).

State: Ms. Rameshan Oad, A.P.G

Date of hearing: 15.11.2019
Date of decision: 15.11.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The appellant by preferring the instant appeal has impugned judgment dated 23.07.1997 passed by learned Additional Sessions Judge, Shahdadpur, whereby the appellant for an offence punishable u/s 468 PPC has been convicted and sentence to undergo Rigorous Imprisonment for three years and to pay fine of Rs.15000/-and in default whereof to undergo Simple Imprisonment for one years.

2. It is the case of the complainant that he and appellant established Faran Educational Society Tando Adam being its President and General Secretary. The appellant by misusing his position as General Secretary of the said Society forged his signatures on various documents. The Faisla between him and the appellant was held by the nekmards, thereby the appellant was

advised to tender apology to him, which he failed to tender. It was in these circumstances, the appellant filed a Direct Complaint before the Court having jurisdiction for prosecution of the appellant for the above said offence. It was brought on record after due enquiry.

3. The appellant joined the trial, pleaded not guilty to the charge, the complainant in order to prove his case examined him and his witnesses and then closed the side.

4. The appellant in his statement recorded u/s 342 Cr.P.C denied the complainant's allegation against him by pleading innocence. He did not examine himself on oath, but examined DW Raja Dilawar in his defence and then closed the side.

5. It was stated by DW Dilawar in his statement that the dispute between the appellant and the complainant arose when the complainant was removed from the President-ship of the Faran Educational Society Tando Adam.

6. On evaluation of evidence, so produced by the complainant learned trial Court convicted and sentenced the appellant as above by way of judgment which is impugned by the appellant before this Court by way of instant appeal as is stated above.

7. It is contended by learned counsel for the appellant that appellant being innocent has been involved in this case falsely by

the complainant as the complainant was removed from the President ship of the Society; no document alleged to have been forged has been produced by the complainant and the evidence which is produced by the complainant has been believed by learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellant.

8. Learned A.P.G for the State sought for dismissal of the instant appeal by supporting the impugned judgment.

9. I have considered the above arguments and perused the record.

10. Section 195(1)(c) Cr.P.C prescribes that no Court shall take cognizance of offence relating to document except on complaint, in writing of Court where it is used. In the instant case, there is no finding of the Court with regard to the fact that the alleged documents are forged and the complaint has been filed by the complainant in person. In that context, it could be concluded safely that the very complaint was barred by the provision of section 195 Cr.P.C. On merits, admittedly, the appellant and the private respondent were President and General Secretary of Faran Educational Society and had been litigating with each other on Civil side. No document, which is found to have been forged by the appellant by way of impugned judgment, has been produced in evidence by the complainant in original. There is no expert

evidence, which may suggest that the documents which are alleged to have been forged by the appellant are actually bearing his signatures.

11. The conclusion which could be drawn of above discussion, would be that the complainant was not able to prove its case against the appellant beyond shadow of doubt and to such benefit the appellant is found entitled.

12. In case of ***Tariq Pervaiz vs the State (1995 SCMR 1345)***. It has been held by the Hon'ble Supreme Court that:-

“For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating reasonable doubt in a prudent mind about the guilt of accused, then he would be entitled to such benefit not as a matter of grace and concession but of right.”

13. In view of above, the conviction and sentence recorded against the appellant together with the impugned judgment are set-aside. Consequently, the appellant is acquitted of the offence for which he was charged, tried and convicted by learned trial Court. The appellant is present in Court on bail, his bail bond is cancelled and surety is discharge.

J U D G E