ORDER SHEET

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No. S- 70 of 2014

DATED	ORDER WITH SIGNATURE OF JUDGE

1. For orders on M.A No.3560/14.
2. For hearing of main case.

13.01.2020

Mr. Ali Abbas Memon, Advocate for HESCO.

Respondents No.1 to 4 are present in person.
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ABDUL MAALIK GADDI, J- The captioned appeal is directed against the orders dated 24.01.2014 & 28.03.2014 passed by the learned Civil Judge / Judicial Magistrate-I Sehwan in Criminal Case No.168 of 2013 arisen out of Crime No.32 of 2013 registered U/S 39, 39(2), 39-A, 379/A(2) Electricity Act, 1910 r/w Section 5(2) Act-II, 1947 PCA at PS F.I.A Hyderabad, whereby the learned trial Court after hearing the parties acquitted the accused on application U/S 249-A Cr.P.C by observing that no case against the private respondents has been made out.

2. Brief facts of the prosecution case are that on 27.08.2013 complainant along with AD Zubair Ahmed Pechuho of F.I.A Hyderabad, officers / officials of M&T HESCO Hyderabad along with their staff and HESCO officers of Sub-Division Sehwan conducted the raid regarding the theft of electricity at Larkana Al-Mansoor Hotel / Restaurant which is situated at by pass road Sehwan. The manager of the hotel namely Ali Raza Jatoi S/o Shamsuddin Jatoi and Assistant Manager namely Imtiaz Hussain S/o Haji Muhammad Soomar of aforesaid hotel were also available there. The M&T concluded the meter and checked the same in presence of SE Operation / Director (S&I), RM M&T / XEN operation and F.I.A officers noted the points as under:

> "Meter found re-packed and remote control device found inserted inside the meters, both meters installed in same premises having same consumer, 50 K.V Transformer along with 04 core cable disconnected and brought to F.I.A office Hyderabad along with arrested persons"

3. Learned counsel representing the appellant / complainant at the very outset, submits that the impugned orders are not sustainable under the law as there was sufficient evidence available on record against the accused persons but the trial Court brushed aside the same, more particularly, the accused were acquitted U/S 249-A Cr.P.C without assigning any valid reason.

4. Conversely, the respondents / accused present in Court by making a prayer for upholding the impugned orders submit that there is no gross illegality, irregularity or infirmity in the impugned order as there are sufficient reasons and grounds which create reasonable doubt in their favour. They further submit that they are appearing before this Court since 2014 without any fault on their part although they have already been acquitted by the competent Court having jurisdiction.

5. I have heard the parties at a considerable length and have perused the impugned orders passed by the trial Court. During the course of arguments, learned counsel for the appellant could not show the specific part of the orders wherein the learned trial Court has committed any gross illegality or irregularity. It is noted that this appeal is pending since 2014 and almost 5 years have been passed and they have already faced agony of protracted trial and then acquitted by the trial Court having competent jurisdiction. The appellant has also failed to produce any convincing evidence before the trial Court for conviction against private respondents.

6. It is not out of context to make here necessary clarification that appeal against acquittal has distinctive feature and approach to deal with appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in latter case. Order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary in nature or based on misreading, non-appraisal of evidence or is artificial, arbitrary and led to gross miscarriage of justice. Mere disregard of technicalities in a criminal trial without resulting injustice, is not

enough for interference. Suffice is to say that an order / judgment of acquittal gives rise to strong presumption of innocence rather double presumption of innocence is attached to such an order. Reliance in this respect may conveniently be pleased on 1998 P.Cr.L.J 1576, 1985 P.Cr.L.J 2973, 1991 SCMR 2220, 1993 SCMR 28, 1985 P.Cr.L.J 457, PLD 1966 Supreme Court 424. While examining the facts in the order of acquittal, substantial weight should be given to the findings of the lower Courts whereby accused were exonerated from the commission of crime as held by the Apex Court in 1998 SCMR 1281. In 1977 P.Cr.L.J 477, it was held that acquittal would be unquestionable when it could not be said that acquittal was either perverse or that acquittal judgment was improper or incorrect as it is settled that whenever there is doubt about guilt of accused, its benefit must go to him and Court would never come to the rescue of prosecution to fill the lacuna appearing in evidence of prosecution case as it would be against established principles of dispensation of criminal justice.

7. Whatever mentioned above, more particularly in light of case law referred above, I reached at the irresistible conclusion that the appellant has miserably failed to prove his case against the accused persons beyond shadow of reasonable doubt, therefore, no interference in the impugned orders is required by this Court. Resultantly, the instant Criminal Acquittal Appeal being devoid of any merit is hereby dismissed along with listed application.

JUDGE

Fahad Memon
13.01.2020