

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Cr. Acquittal Appeal No. S- 242 of 2019

| DATED | ORDER WITH SIGNATURE OF JUDGE |
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1. For orders on M.A No.10547/19.
2. For orders on office objection.
3. For orders on M.A No.10548/19.
4. For hearing of main case.
5. For orders on M.A No.10549/19.
6. For orders on M.A No.10550/19.

13.01.2020

Mr. Imran Malik, Advocate for appellant.

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ABDUL MAALIK GADDI, J- This Cr. Acquittal Appeal is directed against the judgment dated 30.10.2019 passed by the learned Civil Judge / Judicial Magistrate Tando Allahyar in Criminal Case No.03 of 2019 arisen out of Crime No.55 of 2019 registered U/S 406 and 408 PPC at PS A-Section Tando Allahyar, whereby the learned trial Court after full dressed trial acquitted the respondent No.1 by giving him benefit of doubt.

2. Brief facts of the prosecution case are that the complainant is accountant at SAFCO Foundation and on 13.04.2019, he was sitting in office along with Loan Officer Shakeel Ahmed and Branch Manager Muhamad Ayaz where at about 1150 hours, he handed over the amount of Rs.2,69,250/- to the respondent No.1 / Akram Shah (watchman / chowkidar) for depositing in the account of SAFCO at Bank of Muslim Commercial Bank Market Branch Tando Allahyar. After one hour, the complainant tried to contact with the respondent No.1 / Akram Shah but his phone was not responding. Thereafter, the complainant informed the above mentioned colleagues about this incident and along with Muhammad Ayaz went to the MCB Bank and asked about the respondent No.1 / Akram Shah and amount, where bank officials informed them that no one has come for depositing the amount. Later on the complainant along with colleagues search out the said Akram Shah from his village but it came in his knowledge that respondent No.1 / Akram Shah has escaped

away to some unknown place therefore, the complainant lodged instant F.I.R on 23.04.2019.

3. At trial, the prosecution to prove its case has examined following witnesses:

1. PW-1. Adeel Sheikh at Ex.03. He is complainant in his case who produced copy of F.I.R at Ex.03/A.
2. PW-2 Muhammad Ayaz at Ex.04. He is witness of this case.
3. PW-3 Shoukat Ali at Ex.05. He is mashir of this case who produced mashirnama of place of incident.
4. PW-4. Allah Bacnayo at Ex.07. He is Investigating Officer of this case who produced entry of registration of F.I.R at Ex.07/A, joining report of accused Akram Shah at SAFCO Organization at Ex.07/B, record of attendance of accused at Ex.07/C, description of amount handed over to accused at Ex.07/D, record of CDR report at Ex.07/E.

4. After examination of all the above witnesses, the learned A.D.P.P closed the side of prosecution at Ex.08. Statement of accused was recorded U/S 342 Cr.P.C at Ex.09 in which accused denied all the allegations levelled against him and neither examined himself on oath nor produced any witness in his defence.

5. It is argued by learned counsel for the appellant that judgment passed by the learned trial Court is against the law and fact is liable to be set-aside and the respondent No.1 should be given exemplary punishment. He further submits that all the witnesses examined in this case by the trial Court has supported the version of the complainant and evidence shows that the respondent No.1 has committed offence and prosecution has proved its case without any reasonable doubt but the trial Court has delivered the judgment in favour of the respondent No.1 without assigning any valid reason.

6. I have heard the learned counsel for the appellant and perused the evidence and document so brought on record.

7. It is noted that the alleged incident took place on 13.04.2019 whereas the same was registered on 23.04.2019 by the complainant Adeel-u-din after the delay of ten (10) days for

which no satisfactory explanation has been furnished. During the course of arguments, i have specifically asked the question from learned counsel for the appellant to explain the delay in lodgement of F.I.R, but he has no plausible answer with him, therefore, on this ground alone false implication of the respondent No.1 with due deliberation and consultation could not be ruled out. Even otherwise, the material available on record clearly shows that no any tangible evidence has been produced in the trial Court which shows that amount was entrusted to the accused person and same was dishonestly misappropriated by the alleged accused. The documents of amount / notes description which have been produced before the trial Court at Ex.7/D cannot be proved as authentic because how it can be verified by the court that amount which has been misappropriated match with the provided document of description of amount / notes as no any recovery has been effected in this case. However, the electronic attendance sheet which has been produced by the prosecution side does not prove that offence has been committed by the accused as mere presence of the accused at the SAFCO Office is not sufficient to prove the charge. On the other hand, the record of CDR of the accused which has also been produced by the organization that accused has continuously communicated with his brother on the phone call and later on his number was switched off but how it can be determined through the CDR that amount has been misappropriated by the accused and his number was also switched off in this regard. Furthermore the statements of the all the P.Ws are contradictory and doubtful. It is also matter of the fact that F.I.R was registered after the delay of 10 days and no any plausible explanation has been provided and this belated F.I.R is fatal for the prosecution.

8. Considering all the above aspect of the case, i have come to the conclusion that the trial Court has rightly extended the benefit of doubt in favour of the accused / respondent No.1 and the impugned judgment contain valid reasons for extending benefit of doubt to the respondent No.1 in this appeal hence, does not require any interference by this Court. Resultantly, i

found no merit in this appeal which is accordingly dismissed in limine along with all listed applications.

JUDGE

Fahad Memon

13.01.2020