

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

Criminal Revision Application No.S- 74 of 2012

Date of hearing: 03.02.2020
Date of decision: 03.02.2020

Applicant Ali Sher : Through Mr. Ahsan Gul Dahri Advocate

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

None present for complainant.

J U D G M E N T

ABDUL MAALIK GADDI, J. It appears that the learned Civil Judge / Judicial Magistrate-I, Nawabshah after full-dressed trial of the case i.e. Criminal Case No.320 of 2009 (re: The State v. Ali Sher Rahu, arisen out of Crime No.60 of 2007, registered at Police Station B-Section District Nawabshah, under section 489-F PPC), vide judgment dated 10.03.2011, has convicted and sentenced the applicant to suffer RI for one year and fine of Rs.10,000/- and in case of non-payment of fine, he shall suffer SI for two months more, as mentioned in the concluding para (Point No.2) of the said judgment. The said judgment has been assailed by the applicant by preferring Cr. Appeal No.03 of 2011 (re: Ali Sher Rahu v. The State) before the learned Sessions Judge, Shaheed Benazirabad, who entrusted the same to learned Ist. Additional Sessions Judge, Shaheed Benazirabad, who after hearing both parties' counsel vide impugned judgment dated 16.05.2012 dismissed the same

and maintained the judgment passed by the learned trial Court / Judicial Magistrate-I, Nawabshah, which judgment has been assailed by way of present criminal revision application before this Court.

2. Concisely, the facts of the prosecution case are that on 25.06.2007, complainant Muhammad Shafique lodged F.I.R. at Police Station B-Section Nawabshah alleging therein that applicant / accused has asked him and witness Mumtaz Hussain that he will purchase two Toyota Corolla Cars Model 1988 for them from Quetta and obtained amount of Rs.1,50,000/- as advance from them and promised to received the balance amount after delivery of the cars but thereafter he kept the complainant on false hopes and promises for delivery of said cars and then issued him cheque bearing No.47795107 amounting to Rs.1,23,000/- of his Account No.01057736, which on presentation was returned to the complainant dishonoured with such memo from the United Bank Limited Masjid Road Branch, Nawabshah. Hence this F.I.R.

3. It appears from the record that charge Ex.2 was framed against the applicant / accused to which he did not plead guilty and claimed for trial vide plea at Ex.3.

4. In order to prove its case, prosecution examined complainant Muhammad Shafique at Ex.4, who produced Cheque at Ex.5, Return Memo at Ex.6, F.I.R. at Ex.7, application to DPO at Ex.8, letter of Bank Manager at Ex.9, then examined Mashir Ghulam Rasool at Ex.10, who produced mashirnama of place of incident at Ex.10/A, ASI Raja Naveed at Ex.11, Muhammad Yousif at Ex.12; thereafter, learned ADPP for State closed prosecution side under his statement Ex.13.

5. Statement of applicant / accused was recorded under Section 342 Cr.P.C at Ex.14, wherein he denied the allegation of prosecution and

professed his innocence. However, neither he examined himself on oath nor led any evidence in defence.

6. Learned counsel for applicant submits that the impugned judgments are perverse and reasons assigned therein are artificial viz-a-viz the evidence on record; that the impugned judgments are not sustainable under the law as no sufficient evidence was available on record against the applicant to award him conviction but the trial Court as well as appellate Court brushed aside the same, more particularly, the applicant was convicted without assigning any valid reason; that the grounds on which the applicant was convicted are not supportable from the evidence as well as documents on record; that there were material contradictions and discrepancies in the statements of prosecution witnesses which were so material on the basis of which applicant could have been acquitted; that the contradiction and discrepancies in the prosecution evidence have not been properly appreciated; therefore, under these circumstances, he was of the view that on the basis of available record, prima facie, prosecution has failed to prove its case against the applicant however, both the Court below without considering the evidence in a hasty manner have passed the impugned judgments without assigning any valid reason, which are liable to be set aside.

7. Conversely, learned A.P.G supported the impugned judgments and contended that the prosecution has succeeded in proving its case against the Applicant and all the prosecution witnesses have implicated the applicant in the commission of alleged offence. According to her, the Applicant has issued the subject cheque which was dishonoured, therefore, he is fully involved in this case; she, therefore, opposed the revision application.

8. Heard the learned counsel for the applicant as well as learned A.P.G for the State and perused the material available on the record.

9. It appears from the record that in this case the cheque was allegedly issued on 03.10.2006; however, the F.I.R. was lodged on 25.06.2007 by complainant Muhammad Shafique after an inordinate delay of about more than 08 months. During the course of arguments I have specifically asked the question from learned A.P.G to explain the delay in lodging of F.I.R but she has not plausible answer with her; however, she submits that after dishonour / bounce of the cheque the Applicant kept the complainant on false hopes. I am not impressed with the submission of learned A.P.G for the reason that no documentary evidence is available on record to prove this fact. Mere asserting that the Applicant has kept the complainant party on false hopes for returning his amount is not enough, therefore, on this ground false implication of the Applicant in this case with due deliberation and consultation cannot be ruled out.

10. It is the case of the prosecution that in the month of January 2006 applicant / accused told the complainant that he will purchase two Toyota Corolla Model 1988 imported cars for complainant in sum of Rs.2,40,000/- because one of his relative was employee in Custom Department. In this regard complainant paid Rs.1,50,000/- in advance to Applicant but neither said car was delivered to the complainant nor payment was returned; however, in this connection a cheque amounting to Rs.1,23,000/- was given to complainant by the applicant dated 15.08.2006, but when the said cheque was presented in the concerned branch i.e. UBL Masjid Road Branch Nawabshah same was dishonoured on 03.10.2006; however, the present F.I.R. has been lodged on 25.06.2007 for which as observed above, no explanation with

regard to delay in lodging of F.I.R, has been furnished by the complainant. On the other hand, the case and claim of the Applicant is that neither he issued such cheque in favour of the complainant nor any understanding was developed in between them with regard to purchase of two Toyota Corolla Model 1988 cars.

11. It is also the case of the Applicant that prior to present F.I.R. complainant and P.W Mumtaz Hussain came at his village and requested him for their Faisla with Mumtaz Hussain, on his refusal complainant fought with him and during such scuffle his cheque book were dropped / misplaced and same was misused by the complainant and in this connection learned counsel for Applicant has much emphasized upon the N.C registered by Applicant regarding same incident on 02.10.2016 at P.S Qazi Ahmed (available on record) and was of the view that the said cheque has been misused by the complainant. It is noted that the said cheque was not dishonoured but it was returned due to stop payment and this fact was also admitted by the Bank manger and I.O in their respective evidence, available on record.

12. It is also noted that the alleged incident took place on 03.10.2006 whereas complainant in his examination-in-chief (Ex.10) stated that "in month of March 2007 I demanded my money back from accused as he failed to provide car to me according to agreement." The examination-in-chief of complainant Muhammad Shafique appears to be contradictory to the facts as stated by him in F.I.R. There is also nothing on record that before whom the alleged cheque was given to applicant, therefore, claim of the Applicant that his cheque book was misplaced / dropped prior to present F.I.R. and this fact is evident from "N.C", which has been lodged by the Applicant before the concerned police station, appears to be plausible.

13. I have gone through the contents of section 489-F PPC which reveals that said provisions will be attracted if the following conditions are fulfilled and proved by the prosecution:-

- (i) issuance of cheque;
- (ii) such issuance was with dishonest intention;
- (iii) the purpose of issuance of cheque should be;
 - (a) to re-pay a loan; or
 - (b) to fulfill an obligation (which in a wide term *inter alia* applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds a person to some performance;
- (iv) on presentation, the cheque is dishonoured.

14. In the case in hand, complainant has lodged the F.I.R. on the basis of alleged cheque, but he has not brought forward any proof, which would substantiate that the said cheque was issued for fulfillment of any obligation or repayment of loan. It is by now a well established principle of law that mere issuance of the cheque, which was subsequently dishonoured does not constitute an offence, unless it is established that the same was issued with dishonest intention for repayment of loan or for discharging of an obligation, which are missing in this case.

15. I have also gone through the evidence so brought on record and found certain material contradictions in the case of complainant when these contradictions were brought into the notice of learned A.P.G for her reply she has no answer with her. This case pertains to year 2007. Almost 12 years have been passed and the applicant is appearing before this Court since 2012 by filing this criminal revision application. It appears that he has already suffered a lot and faced the agony of protracted trial / proceedings for the last 12 years. Complainant has also not appeared before this Court.

16. In view of the above, I hold that prosecution case is full of contradictions, discrepancies and doubts and as a result thereof, the Applicant is entitled to the benefit of such lacunas / doubts as a matter of right and not as a concession. It is also settled law that if a slightest doubt creates in the case of prosecution then its benefit must be extended in favour of the accused. In this context, reference can be made to the case of Tariq Pervez V The State (1995 SCMR 1345), wherein it was observed that;

“ The concept of benefit of doubt to an accused persons is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right”.

17. For what has been discussed above, in my humble view, the prosecution has failed to prove its case against the applicant beyond any reasonable shadow of doubt, as a result thereof Applicant is entitled for his acquittal.

18. In view of above, the revision application is allowed and the impugned judgments dated 10.03.2011, passed by the trial Court in Criminal Case No.320 of 2009 and dated 16.05.2012, passed by the appellate Court in Cr. Appeal No.03 of 2011 are hereby set aside. As a result thereof, the Applicant is acquitted of the charge. He is present on bail. His bail bond stands cancelled and surety discharged.

JUDGE

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