

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Cr. Acquittal Appeal.No.S- 16 of 2021

1. For orders on office objection.
2. For orders on MA 1173/2021.
3. For hearing of main case.

Date of hearing: 29.03.2021.  
Date of judgment: 29.03.2021.

Mr. Imran Ali Lund, Advocate for appellant.  
Mr. Shahid Shaikh, D.P.G. for State waives the notice.

## J U D G M E N T

***NAIMATULLAH PHULPOTO, J:*** Respondent / accused Abdul Samad Khan Qaimkhani was tried by learned 2<sup>nd</sup> Civil Judge & Judicial Magistrate, Badin in Criminal Case No.34 of 2020 for offences u/s 408 & 420 PPC arising out of crime No.56 of 2020 registered at P.S Badin. After full dressed trial, vide its judgment dated 04.01.2021, respondent / accused was acquitted of the charges. Hence, appellant / complainant Naveed filed this appeal against acquittal.

2. Brief facts of the prosecution case as in para No.2 of impugned judgment are that complainant Naveed Ahmed son of Akhtar Hussain Batro, resident of Hyder Town, Badin lodged FIR, on 26.02.2020 at 1600 hours, stating therein that he is Depot Manager at Muller and Phipps private company at Badin. Respondent / accused Abdul Samad Khan was their accountant. The delivery officers deposited the cash amount in the bank account of the company till office hours and the accountant also used to deposit the cash amount in the bank account of company. On 21.02.2020 the respondent / accused did not come at office without any intimation therefore, the complainant became apprehensive. Thereafter, complainant alongwith Iftikhar Ahmed Arain and Najeebullah Soomro, Field Manager checked out the record and found that an amount of Rs.46,78,398/- were missing and were not deposited in the account of company which were given to the accountant by the delivery officers.

Then the complainant informed the head office that the accountant Abdul Samad Qaimkhani took away an amount of Rs.46,78,398/- between 15.02.2020 and 20.02.2020. Thereafter, complainant lodged the instant FIR.

3. Mr. Imran Ali Lund, learned advocate for the appellant / complainant has mainly contended that trial Court has failed to appreciate the evidence according to the settled principles of law. He further contended that the impugned judgment of the trial Court is based on misreading and non-reading of the evidence. It is also argued that the trial Court has disbelieved strong evidence without assigning sound reasons. Lastly, it is submitted that reasons assigned by the trial Court for recording acquittal were not cogent and prayed for allowing this appeal against acquittal.

4. On the other hand, Mr. Shahid Shaikh, learned D.P.G. present in Court in some other matters, waives notice and supported the impugned judgment of the trial Court.

5. I have carefully heard learned advocate for appellant, learned D.P.G for State, scanned the entire prosecution evidence and perused the impugned Judgment. **In the present case no tangible evidence was produced by the prosecution to establish the direct or indirect involvement of the respondent regarding the commission of alleged offence. Trial Court in para-12 of the judgment has mentioned that complainant admitted that he nominated two more persons in the Direct Complaint whereas during cross examination he stated that the contents of FIR and contents of Direct Complaint both are true. In the judgment it is also mentioned that the complainant did not provide a single receipt of the payment of cash to the Investigation Officer. From the close scrutiny of the evidence it reflects that evidence of the complainant is self-contradictory and complainant failed to produce any single document in evidence in support of his case.** The judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculating and ridiculous as held by the Honourable Supreme Court in the case of The State v. Abdul Khaliq and others (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the above referred judgment.

6. As already observed, there were deficiencies in the prosecution case as pointed out by the trial Court in the impugned Judgment. Trial Court had rightly acquitted respondent / accused.

7. For the above stated reasons, once again it is observed that judgment of the trial Court was neither arbitrary nor perverse Finding of acquittal recorded in favour of respondent / accused by the trial Court is based upon sound reasons which require no interference. As such, the instant appeal against acquittal is without merits, and the same is dismissed alongwith pending application.

JUDGE

Tufail