

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

Cr. Acquittal Appeal No.S- 231 of 2019

Date of Hearing: 21.08.2020
Date of Judgment: 21.08.2020

Appellant: Rehmatullah s/o Ghulam Rasool
Broghi, through Mr. Mian Taj
Muhammad Keerio, Advocate.

The STATE: Through Mr. Shahid Shaikh, D.P.G
Sindh, who waives the notice.

J U D G M E N T

NAIMATULLAH PHULPOTO, J.- Through this Criminal Acquittal Appeal, appellant / complainant has impugned the judgment dated 31.10.2019 passed by learned Model Trial Magistrate Court-II, Civil Judge & Judicial Magistrate-I, Hyderabad in Criminal Case No.887 of 2018 arising out of Crime No.40 of 2018 registered under Sections 489-F PPC at P.S B-Section, Latifabad Hyderabad . On the conclusion of the trial, vide judgment dated 31.10.2019, respondent No.1 / accused namely Tauk Ali was acquitted of the charge.

2. Brief facts of the prosecution case as disclosed in the impugned judgment are as under:-

“Complainant is the landlord and in the year 2015 he got a deal of 216 Acres agricultural land with respondent No.1/accused Tauk Ali and given token money of Rs.1,00,00,000/- (Rupees One Crore) in presence of witnesses but due to forged documents, the said deal

could not take place. Complainant asked the accused to return his amount then accused issued a cheque bearing No.2254932626 of dated 05.01.2018 of Rs.20,00,000/- of ABL Bank Unit No.10 Latifabad to the complainant. Complainant submitted the said cheque for encashment but the same was bounced for insufficient amount in his account and concerned bank issued memo return. Therefore, complainant after obtaining the order from concerned court, registered the aforesaid FIR.”

3. On the conclusion of the investigation, challan was submitted against the accused under Sections 489-F PPC.

4. Learned Trial Court framed the charge against the accused. Accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution in order to establish its` case examined in all 04 PWs. Thereafter, prosecution side was closed.

6. Statement of accused was recorded under Section 342 Cr.P.C at Ex-11, in which accused claimed false implication in this case and denied the prosecution's allegation.

7. Learned trial Court after hearing learned counsel for the parties and assessment of the evidence vide judgment dated 31.10.2019 acquitted the accused / respondent hence this Criminal Acquittal Appeal.

9. Learned Counsel for the appellant / complainant has mainly 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, and prayed for converting the acquittal of the accused to the conviction.

10. Learned D.P.G supported the impugned judgment.

11. It is settled law that ordinary scope of acquittal appeal is considerably narrow and limited and obvious approach for dealing with the appeal against the conviction would be different and should be distinguished from the appeal against acquittal because presumption of double innocence of accused is attached to the order of acquittal. In the case of **Zaheer Din v. The State (1993 SCMR 1628)**, following guiding principles have been laid down for deciding an acquittal appeal in a criminal case:-

“However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualized from the cited and other cases-law on, the question of setting aside an acquittal by this Court. They are as follows:--

(2) The acquittal will not carry the second presumption and will also thus lose the first one if on pints having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.

(3) In either case the well-known principles of reappraisal of evidence will have to be kept in view while examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observations of some higher principle as noted above and for no other reason.

(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion

and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous.”

12. In the present case, in the cross examination appellant / complainant has admitted that respondent No.1 filed a F.C. Suit No.489 of 2018 against the appellant / complainant Rehmatullah for Declaration, Settlement of Accounts and Mandatory Injunction. Appellant / complainant replied during cross examination that he does not know whether in the said suit accused claimed for payment of Rs.33,00,000/- which was given to the appellant by accused. Civil litigation regarding the subject matter is pending. Object of Section 489-F PPC is to curb the fraudulent and dishonest intention for issuance of cheque and to punish a person who dishonestly issues the same. In the present case, no fraudulent intention of the respondent has come on record. Trial Court has assigned sound reasons for recording the acquittal.

13. In an appeal against acquittal this Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when appeal is admitted for re-appraisal of evidence so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well

accepted presumptions: One initial, that, till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.

14. Learned Counsel for the appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. The view taken by the learned trial Court is a possible view, structured in evidence available on the record and as such is not open to any legitimate exception. It is by now well settled that acquittal once granted to an accused cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

15. For the above stated reasons, this Criminal Acquittal Appeal is without merit and the same is dismissed.

JUDGE

Tufail