

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

Cr. Acquittal Appeal.No.S- 62 of 2021

1. For orders on MA 2377/2021.
2. For orders on office objection.
3. For orders on MA 2378173/2021.
4. For hearing of main case.

Date of hearing: 02.04.2021.
Date of judgment: 02.04.2021.

Mr. Malik Masood Ahmed, Advocate for appellant.
Mr. Shewak Rathore, D.P.G. for State waives the notice.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondent / accused Nisar Ahmed has filed this acquittal appeal being dissatisfied and aggrieved with the impugned judgment dated 01.03.2021 passed by learned Civil Judge & Judicial Magistrate-III/MTMC Shaheed Benazirabad in Old Criminal Case No.122/2020 (New Criminal Case No.67/2020), whereby respondent Liaquat Ali was acquitted of the charge by the trial court.

2. Brief facts of the prosecution case as mentioned by trial court in impugned judgment in para No.2 are as under:-

“The brief contents of FIR are that complainant Nisar Ahmed is running the business of sale and purchase of the vehicles. Namely, Liaquat Ali son of Soomar Khan Mari purchased four vehicles, one Honda City car Model 2006 in the sum of Rs.11,50,000/-, one Honda City car Model 2015 in the sum of Rs.22,50,000/-, one Toyota Grandi car Model 2017 in the sum of Rs.33,00,000/- and one Alto car Model 2008 in the sum of Rs.7,60,000/- in presence of his brother Faraz Ahmed and Muhammad Ali Arain and paid the amount of Rs.9,00,000/- as advance amount and for the remaining amount of Rs.65,60,000/- he issued a postdated cheque bearing No.5998293 dated 4.5.2020 of his account No.365-2-4 maintained with MCB bank Nawabshah. On the stipulated date the complainant deposited the said cheque in his account No.00811650502103 maintained with Askari Bank Katchery Road Nawabshah but the said cheque issued by accused Liaquat Ali Mari did not cash. The complainant narrated such facts with accused and accused kept the complainant on false hopes and lastly refused.”

3. After registration of FIR usual investigation was conducted and final report was submitted against the accused / respondent under section 489-F PPC. Trial Court framed charge against the respondent to which he pleaded not guilty and claimed to be tried.
4. At the trial prosecution examined in all five (05) PWs who exhibited numerous documents thereafter prosecution side was closed.
5. Statement of accused was recorded u/s 342 Cr.P.C wherein he denied the prosecution allegations. However, neither he examined himself on Oath nor led any evidence in his defence.
6. Learned trial court after hearing the learned counsel for the parties and assessment of evidence vide judgment dated 01.03.2021 acquitted the accused / respondent. Hence, this appeal is filed.
7. Mr. Malik Masood Ahmed, learned advocate for appellant / complainant has mainly argued that trial court had wrongly acquitted the accused / respondent as the cheque is sufficient proof in the case. He further submitted that impugned judgment suffers from misreading and non-reading of evidence and is liable to be set aside.
8. On the other hand, Mr. Shewak Rathore, learned D.P.G. present in Court in some other cases, waives notice and supported the impugned judgment of the trial Court while arguing that the impugned judgment is well reasoned and scope of acquittal appeal is narrow and limited. He further argued that after acquittal, respondent / accused has the presumption of double innocence and prays for dismissal of this acquittal appeal. Reliance is placed upon the case of SHAHID HUSSAIN v. PREM KUMAR and 2 others (2015 YLR 691).
9. I have heard the arguments of learned counsel for the parties and perused the record.
10. Before proceeding further I would like to reproduce Section 489-F PPC which reads as under:-

“489-F. Whoever dishonestly issue a Cheque towards repayment of a loan or fulfilment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to three years, or with fine, or with both unless he can establish for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the Cheque would be dishonoured and that the bank was at fault in not honouring the Cheque”.

11. It is by now well settled principle that to bring the case within the ambit of Section 489-F, two ingredients are essential i.e. dishonouring of a Cheque, which should be towards fulfillment of an obligation or re-payment of loan, as the case may be. The complainant has filed this case on the basis of alleged Cheque but he has not brought forward any proof which would substantiate that the said Cheque was for the fulfilment of any obligation. In the judgment while discussing para No.14, the trial court has clearly mentioned that fact. Relevant portion is reproduced hereunder:-

“The complainant during cross examination further admitted that he did not produce copies of the documents of the alleged four vehicles. The relevant portion of the complainant’s cross examination is reproduced as follows. “It is correct to suggest that I have not produced any photocopy of documents of the alleged four vehicles in my chief examination.”

12. Learned advocate for the appellant / complainant submits that the record regarding business of vehicles was not produced before the trial court in evidence but at the time of arguments it was produced but record of the trial court is silent in this regard. It is also to be noted that the parameters and scope of interference in an appeal against acquittal and appeal against conviction are quite different. In the case of appeal against acquittal the interference by a Court is unwarranted until and unless the acquittal is arbitrary, capricious and against the record. Appraisal of evidence in an appeal against conviction is done in a very strict manner but in an appeal against acquittal the same rigid method is not to be applied and interference can only be made where there is gross misreading of evidence amounting to miscarriage of justice.

13. In view of what has been discussed above, I find nothing wrong with the impugned judgment as neither the same is arbitrary nor capricious. Accordingly, instant criminal acquittal appeal being without merits is hereby dismissed alongwith listed applications.

JUDGE

Tufail