

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

Criminal Acquittal Appeal No.S-39 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on office objections.
	2. For orders on M.A. No.1556/2022.
	3. For hearing of main case.
<u>22.04.2022</u>	

Asif Ali Talpur, Advocate for the appellant/complainant.

==

The facts in brief necessary for disposal of instant criminal acquittal appeal are that the appellant lodged an F.I.R with P.S Satellite Town against the private respondent for allegedly issuing a cheque in his favour dishonestly and he after due trial was acquitted by learned Judicial Magistrate-I MTMC, Mirpurkhas vide judgment dated 21.01.2022, which is impugned by the appellant before this Court by preferring the instant criminal acquittal appeal.

It is contended by learned counsel for the appellant that learned Trial Magistrate has recorded acquittal of the private respondent on the basis of improper appraisal of evidence; therefore, his acquittal is liable to be examined by this Court.

Heard arguments and perused the record.

The F.I.R of the incident has been lodged with delay of about 18 days; such delay having not been explained plausibly could not be overlooked. As per impugned judgment the appellant has not been able to prove mens rea on the part of the private respondent which was necessary to attract provision of 489-A P.P.C. Parties are already disputed over sale and purchase of the

motorcycle. In these circumstances, learned trial Magistrate was right to record acquittal of the private respondent by way of impugned judgment and such acquittal is not found to be arbitrary or cursory to be interfered with by this Court.

In case of *State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)*, it has been observed by the Hon'ble Apex Court that;

“The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities”.

In view of the facts and reasons discussed above, instant criminal acquittal appeal is dismissed in *limine* along-with listed application.

JUDGE