

**JUDGMENT SHEET**

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

Cr. Acquittal Appeal No.S-22 of 2021

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on office objections.
2. For orders on MA-1367/2021
3. For orders on MA-1368/2021
4. For hearing of main case.
5. For orders on MA-1369/2021

**12.12.2022.**

Mr. Muhammad Hashim Laghari, Advocate for appellant.  
Mr. Muhammad Ali Noonari, Deputy Prosecutor General.

**JUDGMENT**

Through this Criminal Acquittal Appeal, the appellant / complainant has impugned the judgment dated 16.01.2021 passed by learned Civil Judge & Judicial Magistrate-I / MTMC Mirpurkhas (Trial Court) in Criminal Case No.204 of 2019 (Re: The State v. Inam-ul-Haq and another) arising out of Crime No.52 of 2019 registered at P.S Khan for offences under Sections 420, 506(ii), 34 PPC, whereby respondents /accused namely Inam-ul-Haq and Rano have been acquitted of the charges.

2. Learned Counsel for appellant submits that respondents/accused have cheated the appellant/complainant for which sufficient evidence was adduced before the trial Court but it was not considered nor appreciated; therefore, trial Court has wrongly acquitted them by causing miscarriage of justice. He; however, could not controvert the fact that issue involved in this case pertains to the transaction over Tractor which comes within the ambit of civil transaction for which proper forum is available to be adopted.

3. Mr. Muhammad Ali Noonari, learned Deputy Prosecutor General present in Court in connection with other cases, waives notice of appeal and after going through the file submits that there is no illegality or infirmity in the impugned judgment which may warrant interference by this Court. Learned D.P.G by opposing instant appeal has drawn attention of the Court towards Point No.2 of the impugned judgment available at Pages-21 of the Court file and submits that instant appeal is liable to be dismissed.

4. Heard and perused the record.
5. Before parting with the judgment, it will be appropriate to reproduce the reasons given by the trial Court for acquittal of the respondents under the impugned judgment in Para-15 which reads as under:-

“15.....

*I have gone through the available material before me and perused the record carefully. The specific allegations leveled in the contents of FIR on dated 20.06.2018 at about 1200 hours above named accused persons cheated with complainant namely Shafi my S/o Muhammad Rahim by dishonestly inducing him to purchase tractor on credit amount of Rs.13,00,000/- and without making payment of sale consideration amount to the complainant sold the same tractor to Imran tractor showroom at Nawabshah and when complainant demanded amount of his tractor accused Inam-ul-Haq took out pistol and pointed at complainant by issuing threats of dire consequences at Nawabshah Morr where complainant met with both accused. In order to prove the case prosecution led four witnesses.*

*Before analyzing and giving my observation I would like to discuss the ingredients of section 420 PPC and 506(ii) PPC. From the bare reading of above said provision the ingredients of section 420 PPC are cheating and dishonestly inducing delivery of property. Cheating is defined in section 415 PPC which says; “whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to delivery and property to any person or to consent that any person shall retain any property or intentionally induces the person so deceive to do or omit to do anything which he would not do or omit if he were not so deceived”.*

*First of all I would like to discuss statement of accused persons wherein they denied the allegations leveled against them and stated that complainant lodged false FIR against them. It is an admitted position that as per contents of FIR, incident took place on dated 20.06.2018 and FIR of the incident was lodged on dated 26.10.2019 after delay of almost one year and four months without giving plausible explanation. Complainant admitted in his cross that from 20.06.2018 to 26.10.2019 he did not move application at any forum. Complainant also admitted in his cross that he has not produced written agreement regarding the selling of tractor to accused Inam-ul-Haq and he also did not obtain receipt of handing over tractor to accused persons. As per contents of FIR, complainant disclosed that accused persons purchased tractor bearing registration number T-2836 Belarus 510 of Model 2013 from him on credit whereas, during the evidence IO purchased delivery order at Ex-10/I in which the model of tractor is mentioned as 2010. Similarly, as per contents of FIR complainant disclosed that he handed over tractor along with original registration documents to accused*

*persons but the investigation officer produced receipt of purchasing tractor by complainant from a dealer and in such receipt it is clearly mentioned that complainant namely Shafi Muhammad received registration documents of tractor from dealer on dated 30.06.2018 and the same fact is admitted by the IO during his cross-examination. In my humble observation, if complainant received original documents of tractor from dealer as mentioned on the receipt at Ex-10-I on dated 30.06.2018 then how did he hand over the same to accused persons on dated 20.06.2018.*

*Furthermore, complainant deposed in his cross that police officials came to visit place of incident in a Datsun whereas mashir of the memo of site inspection deposed in his cross that police came to visit place of incident in a police mobile and investigation officer deposed in his cross that they went to visit place of incident in a private Mehran car. From three different depositions it cannot be ascertained whether IO visited place of incident or he simply completed his formality by preparing memo of site inspection. During the course of cross examination PW Ali Nawaz deposed that complainant made deal with accused Rano whereas, as per contents of FIR complainant disclosed that he made deal with both accused. The above discussion creates serious doubt in prosecution story as complainant lodged FIR after delay of more than one year without giving plausible explanation of such delay, there is lack of corroboration in the contents of FIR and the evidence produced by the prosecution.*

*It is settled principle of law that prosecution is duty bound to prove case against the accused person beyond shadow of doubt. In present case material doubt has been created and a single doubt shall always go in favour of accused. Furthermore, there is lack corroboration between the evidence of complainant and witness of the case.”*

6. In view of above, it appears that the evidence as brought on record was not proved by the prosecution; therefore, does not inspire confidence; hence, no illegality and infirmity has been committed by the trial Court in the impugned judgment while acquitting the respondents, which may warrant interference by this Court. It is also settled principal of law that after getting acquittal, the accused always earns double presumption of his innocence and Superior Courts have avoided interfering with such acquittal findings. There is no cavil with the legal proposition that an acquittal appeal stands on a different footings than an appeal against conviction. In acquittal appeal, the Superior Courts generally do not interfere with unless they find that miscarriage of justice has taken place. The factum that there can be a contrary view on re-appraisal of the evidence by the Court hearing acquittal appeal simpliciter would not be sufficient to interfere with acquittal judgment.

Reliance can be placed upon case of **MUHAMMAD ASGHAR and another v. The STATE (PLD 1994 Supreme Court 301)**.

7. In view of above legal position, it appears that instant appeal has wrongly been filed, even the basic ingredients for initiating appeal against acquittal, as laid down by the Honourable Supreme Court of Pakistan in the case of **GHULAM SIKANDAR and another v. MUMARAZ KHAN and others (PLD 1985 Supreme Court 11)**, are also lacking in this case. Accordingly, instant appeal against acquittal is dismissed alongwith pending application, if any.

JUDGE

Shahid