

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Acquittal Appeal No. 68 of 2021

Date	Order with signature of Judge
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For hearing of main case

**14.11.2023**

Mr. Anas Awan advocate for the appellant  
Mr Siraj Ali Khan Additional PG  
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Through this Criminal Acquittal Appeal, the appellant-Levi Starus Pakistan (Pvt) Ltd company has impugned the judgment dated 01.12.2020, passed by learned Civil Judge & Judicial Magistrate IV Malir, Karachi in Criminal CaseNo. 68/2019, (*Re: The State Vs Amir Mehmood & Another*), culminating from F.I.R. No. 186/2019 under Section 381/420/468/471/408/418/34 P.P.C. of P.S. Malir Cantt Karachi, whereby the respondents No.1 and 2 have been acquitted from the charge under Section 245(1), Cr.P.C., by giving them the benefit of doubt.

2. The charge against the private respondents is that they being employees at Levis Outlet Store at M.M Alam Road, Karachi, cheated and caused a huge loss of Rs.16,874,271 to the appellant company with effect from 1.12.2018 to 30.6.2019 and wrongful gain to themselves by misappropriating the articles lying at the outlet store, and submitted forged deposit slips, such F.I.R was registered against the respondents and case was challaned before the trial court.

3. To prove its case, the prosecution has examined PW-01 complainant Muhammad Shahzad at Ex.3, he produced FIR at Ex.03/A, memo of site inspection at Ex-03/B, pictures at Ex-03/C, a memo of the arrest of accused Amir Zaidi at Ex-03/D, memo of the arrest of accused Inzamam at Ex-03/E, memo of seizure at Ex-03/F and confessional letter at Ex-03/G and Ex-03/H respectively. PW-02 Muhammad Ali was examined at Ex-04. PW-03 Syed Maaz Hussain was examined at Ex.05. PW-04 Muhammad Khan at Ex.06, who produced an application for lodging FIR at Ex-06/A. PW-05 Kashif Hussain was examined at Ex.7, he produced letters at Ex-07/A to Ex-07/C respectively, and deposit slips at Ex-07/C. The prosecution gave up one witness namely Humayon Shahzad at Ex.08. PW-06 SIP Huzoor Bux was examined at Ex.09, he produced entries from Ex-9/A to Ex-9/D respectively, he further produced copies of slips from Ex-9/E to Ex-9/K respectively, entries from Ex-09/L to Ex-

09/M, list of sale at Ex. 9/N and he produced a USB of a call recording between the accused at Ex-Article/1.

4. The statement of the accused under Section 342 Cr. P.C. was recorded, wherein they denied the allegation/evidence brought on the record by the prosecution and claimed their innocence. However, they declined to examine themselves on oath or lead any evidence in their defense. The learned trial court after examining the evidence and hearing the parties acquitted the respondents from the aforesaid charge vide Judgment dated 01.12.2020.

5. Mr. Anas Awan the learned counsel for the appellant has submitted that the trial Court has failed to take into consideration, the facts and law involved in the case; and that the learned trial court failed to appreciate that there was no doubt regarding the entrustment of property of the Company/LSPL to the accused as such they committed criminal breach of trust; that learned trial court failed to appreciate that the private respondents/accused were managing and running the Company's outlet store and failed to account for the sale and purchase of the items by committing fraud and forgery as well as criminal breach of trust thus are liable to be convicted. Learned counsel emphasized that the accused had cheated the appellant company by forging the bank deposit slips to cause loss to the company and wrongful themselves; that the learned Trial Court also had ample powers to summon additional evidence which was denied without reasonable cause thus caused miscarriage of justice; that impugned judgment is based upon surmises and conjecture, discarding and discrediting the independent evidence brought on the record in favour of appellants-company, hence it is a fit case where the interference of this Court is required; that the learned Trial Court failed to appreciate the evidence of PW-1 Humayun Shahzad who stated that both the accused confessed their guilt and he produced the confession letter of accused, however this piece of evidence was discarded; that the impugned order disregards important and material evidence by holding that there was hearsay evidence against the accused; that impugned order ignored material evidence and adopted arbitrary reasoning; that the learned Trial Court has failed to appreciate the evidence from independent witness PW-Kashif Hussain, Operation Manager, Standard Chartered Bank, wherein it had been admitted that there was no record of 5 out of 7 deposit slips and that same deposit slips were/are forged and fabricated thus it was fit case for conviction of the accused but this piece of evidence was ignored; that there was Audit report which shows complicity of the accused to commit crime. He argued that the accused/Respondents orchestrated a scheme of fraud, cheating, and breach of trust against the Company over many months however, this factum was disregarded by the learned trial Court in

the impugned judgment; that learned trial Court failed to appreciate the facts that the Investigation Officer of the case, SIP Huzoor Bux, produced one USB having a telephonic conversation recorded between accused persons, however, this piece of evidence was discarded by the trial Court. He argued that the learned Trial Court failed to appreciate the fact that PW-2 Muhammad Ali Shahzad, Ex-04, deposed that there was a misappropriation of funds and the accused called who admitted their guilt with the narration that they had misappropriated the amount of LEVI worth Rs 1 million and 80 thousand Accused Inzizam also confessed his guilt and admitted that he had forged the deposit slip of bank and was an accomplice to accused Amir Mehmood and committed embezzlement of Rs 16.8 million from December 2018; that accused Inizmam admitted that he had received some amount from accused Amir. In support of his contention he relied upon the cases of Muhammad Iqbal v Abid Hussain & others 1994 SCMR 1928, Mst. Aisha Bibi v Nazir Ahmed & others 1994 SCMR 1935, Allah Rakha v The State & others 2013 P.Cr.L.J 1014, Nasir Khan v The State 2005 P Cr. L.J, Ishtiaq Ahmed Mirza & others v Federation of Pakistan & others PLD 2019 SC 675, Shiraz Zafar v The State 2017 YLR Note 243 and Advocate General West Pakistan & others v Tahir Beg PLD 1965 (W.P) Karachi 155. He prayed for awarding conviction to the respondents.

6. Learned Additional PG Sindh has supported the impugned judgment.

7. I have heard the learned counsel for the appellant on the maintainability of the instant Acquittal Appeal and learned Additional PG Sindh and perused the record with their assistance.

8. The following findings of the trial court explicitly show the factual aspect of the case:-

*i) that the Complainant received information from the finance department of the appellant company with effect from 18.6.2019 to 28.6.2019, Rs.10 lacs had not been deposited in the company's account from the outlet situated outside Malir Cantt. Per his testimony, he asked the company to conduct an audit of the Outlet Store and after such audit, they found that from 01.12.2018 till 30.6.2019 there was an embezzlement of Rs.16.8 Million. However, deposed in his cross-examination that there was/is an inventory audit every month and there was no misappropriation in that inventory audit. Thus, the presumption was/is that there was no misappropriation as alleged from 01.12.2018 to 30.6.2019. More so, it is pertinent to mention herein that during the entire trial, the prosecution through their evidence could not point out as to what quantity of material was given/entrusted to the outlet store and what quantity had been misappropriated by the accused from such entrustment.*

*ii) Moreover, the prosecution has examined PW Muhammad Ali and Syed Maaz Hussain as private witnesses to the case but their testimony is on hearsay evidence and both witnesses have deposed that they were informed by the appellant company that there was a misappropriation.*

iii) *The prosecution examined PW Kashif Hussain (Operational Manager) of Standard Chartered Bank, who produced a letter to the Investigating officer for verification wherein Standard Chartered Bank had maintained that there was no record of 5 out of 7 deposit slips and per prosecution that same deposit slips were forged/fabricated by the accused so also used by them to get away with the misappropriation and embezzlement of funds. Needless to mention herein in such kind of business where there are outlet stores of the company usually payment is made on the very day when the stock is sold and such deposit slip is sent to the company through an email and in the case of hand company has remained silent until there was an audit report which has not been produced before the court.*

iv) *Reverting to the alleged forgery/fabrication done by the accused by giving forged and fabricated deposit slips used by the accused the prosecution has failed to produce any such email and proof which shows that those deposit slips were forged and were used by the accused facing trial. Prosecution must turn every stone to bring out the truth before the court and any unturned stone creates doubt in a prudent mind, the benefit of such shall always given to the accused.*

v) *The investigation Officer of the case SIP Huzoor Bux produced one USB having a telephonic call recording between both the accused but he admitted that the same recording was not verified by any forensic laboratory to match the vocalcords before producing it before the court. The investigation officer also admitted that he did not know whether the voice of the call recording was of the accused or not. Not only that, he admitted that the complainant did not produce any witness to testify about the commission of the offense, but also he admitted that the company had not provided any sell receipt of misappropriated articles.*

vi) *Thus it is clear from the evidence of the prosecution witnesses as mentioned above that the present accused neither received/entrusted physical possession of the articles of a huge amount nor can be said to have been entrusted with the same as no inventory/list of misappropriated articles have been produced before the court.*

9. It is well settled that once a charge for an offense, duly tried, results in acquittal, the accused person acquires a very right and he should not therefore be put in jeopardy of his life again. It would be advantageous to summarize the principles governing the appeal against acquittal under section 417 Cr.P.C.

- i) *Parameters to deal with the appeal against conviction and appeal against acquittal are different because the acquittal carries a double presumption of innocence and the same can be reversed only when found blatantly perverse, illegal, arbitrary, capricious, speculative, shocking, or rests upon impossibility.*
- ii) *It is well settled law by now that in criminal cases every accused is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such a double presumption of innocence.*
- iii) *Acquittal recorded by the trial court based on cogent reasons and not perverse would not be interfered. The appellate court should not lightly interfere with the judgment of acquittal unless it arrives at a definite conclusion that evidence has not been properly analyzed and the court below acted on surmises or conjectures.*

- iv) *Acquittal cannot be reversed merely because a contra view is possible, where the findings of the trial court are not unreasonable, improbable, perverse, or patently illegal. Where based on evidence on record two views are reasonably possible, the appellate Court should not substitute its view in the place of that of the trial Court.*
- v) *The presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.*
- vi) *Judgment of acquittal can be reversed where the trial Court committed glaring misreading or non-reading of evidence and recorded its findings in a fanciful manner, contrary to the evidence brought on record.*
- vii) *The appellate Court, while dealing with an appeal against acquittal, must proceed with the matter more cautiously and only if there is absolute certainty regarding the guilt of the accused considering the evidence on record, acquittal can be interfered with or disturbed.*

10. In view of the above-stated facts and circumstances, the learned trial court was well within the remit of settled law to acquit respondents. Learned counsel for the appellant has failed to point out any misreading or non-reading of evidence, glaring illegality, perversity, unreasonableness, or arbitrariness in the impugned judgment.

11. In the light of principles as summarized in the preceding paragraphs I am persuaded to hold that no grounds are available warranting interference with the impugned judgment. The impugned judgment rendered by the trial court is well-reasoned and based on judicial prescriptions laid down in various judgments of the Supreme Court.

12. There is no finding contained in the impugned judgment inviting interference by this Court. The instant appeal is squarely devoid of any merits, which is accordingly dismissed.

JUDGE