

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
Criminal Revision Application No. S- 92 of 2021  
(*Muhammad Yasin Narejo Vs. The State*)

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For hearing of main case.

**ORDER.**  
**29-01-2024.**

Mr. Muhammad Ibrahim Gambheer, advocate for the applicant.  
Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

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*Irshad Ali Shah,J;* It is alleged by the prosecution that the applicant obtained fertilizer against the payment, which was made by complainant Majid Ali; the applicant in order to satisfy such payment dishonestly, issued a cheque in favour of the complainant, it was bounced by the concerned Bank, when was presented there for encashment, for that he was booked and reported upon by the police. On conclusion of trial, the applicant was convicted u/s 489-F PPC and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 30,000/- and in default whereof to undergo simple imprisonment for one month with benefit of section 382 (b) Cr.P.C by learned IInd Civil Judge & Judicial Magistrate Gambat vide judgment dated 19-12-2020, which the applicant impugned by preferring an appeal, it was dismissed by learned IVth Additional Sessions Judge, Khairpur vide judgment dated 02-02-2021, such dismissal of his appeal is impugned by the applicant before this Court by preferring the instant Crl. Revision Application.

2. It is contended by learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant on the basis of cheque, which was stolen and evidence brought on record was not enough to base conviction against him; therefore, he is entitled to be acquitted of the offence charged by

extending him benefit of doubt, which is opposed by learned DPG for the State by supporting the impugned judgment by contending that no illegality or irregularity is noticed in the proceedings.

3. Heard arguments and perused the record.

4. The FIR of the incident has been lodged with delay of about four months; such delay having not been explained plausibly could not be overlooked, it is reflecting deliberation and consultation. PW Suresh Kumar, who actually supplied the fertilizer to the applicant and the manager of UBL Bank, who has issued the memo for bouncing the subject cheque have not been examined by the prosecution for no obvious reason. The presumption which could be drawn of their non-examination in terms of Article 129 (g) of Qanun-e-Shahat Order, 1984 would be that they were not going to support the case of prosecution. As per I.O/SIP Jamil Ahmed Junejo the statement u/s 161 Cr.P.C of the PWs on 17-10-2019, it was with delay of nine days even to lodgment of the FIR, which has reduced the evidentiary value of the evidence of the witnesses. The applicant during course of his examination u/s 342 Cr.P.C has denied the prosecution's allegation by pleading innocence and such plea on his part could not be overlooked. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the applicant beyond shadow of doubt and to such benefit, he is found entitled.

5. In case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR-127), it has been held by the Apex Court that;

*“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names*

*of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.*

6. In case of *Abdul Khaliq vs. the State* (1996 SCMR 1553), it has been held by Apex Court that;

*“---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”*

7. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by the Apex court that;

*“4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".*

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the applicant under impugned judgment(s) are set aside, he is acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial Court and appellate Court; he is present in Court on bail, his bail bond is cancelled and surety is discharged.

9. The instant Criminal Revision Application is disposed of accordingly.

JUDGE

