

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Acquittal Appeal No. 53 of 2023
(Ahsan Junaid Mirza v. Shaikh Farrukh Mumtaz and & 04 others)

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of case

07.08.2023

Mr. Noor Hussain Jamali, advocate for the appellant

IRSHAD ALI SHAH, J.- By maintaining the allegations of forgery and fraud, the appellant in capacity of Attorney of Mst. Kausar Huma lodged an FIR for prosecution of the private respondents for allegedly having committed offence punishable under Section 420, 468, 471, 448 and 34 PPC wherein on filing of application under Section 249-A Cr.P.C they were acquitted by learned Civil Judge and Judicial Magistrate-V Malir Karachi vide order dated 30.11.2022, which the appellant has impugned before this Court by preferring the instant acquittal appeal.

2. It is contended by learned counsel for the appellant that learned trial Magistrate has recorded acquittal of the private respondents, without providing a fair opportunity to the appellant to prove his case; therefore, such acquittal is to be examined by this court.

3. Heard arguments and perused the record.

4. The FIR of the incident has been lodged with delay of about 02 months; such delay having not been explained plausibly could not be overlooked. The appellant is not eye-witness of the incident and he has lodged the proceedings of the present case in capacity of the Attorney of the aggrieved person, which appears to be surprising; the parties have exhausted their remedy on civil side. In these circumstances, learned trial Magistrate was right to record the acquittal of the private respondents as there was no probability or possibility of their conviction, therefore, their acquittal is not found arbitrary/cursory to be interfered with by this Court.

5. In case of *State and others vs. Abdul Khaliq and others* (PLD 2011 SC-554), it has been held 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".

6. In view of above, the instant Acquittal Appeal fails, it is dismissed in *limine*.

JUDGE