

**JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

Criminal Acquittal Appeal No.S-122 of 2023

For orders on office objection.  
For orders on MA No.8144/2023.  
For hearing of main case.

Appellant: Imdad Ali Bughio through Mr. Meer Ahmed Mangrio, Advocate.

Respondents: Notice was issued.

Date of hearing: 11.09.2023

Date of Decision: 11.09.2023

**J U D G M E N T**

**ZULFIQAR ALI SANGI, J-** Through instant Criminal Acquittal Appeal, the appellant/complainant Imdad Ali Bughio has assailed the judgment dated 14.07.2023, passed by the learned 1<sup>st</sup> Civil Judge & Judicial Magistrate, Kotri, Dadu in Criminal Case No.37/2022 (Re. The State Vs. Samiullah), in crime No.51 / 2022, for offence punishable Under Section 489-F PPC registered at Police Station Jamshoro, whereby respondent / accused was acquitted.

**2.** Precisely, the facts leading to disposal of instant criminal acquittal appeal as per complainant are that at the request of respondent / accused, he gave him a loan of Rs.1,700,000/- (Rupees seventeen lacs) for business purpose in presence of his friend Ghazi Khan Parhiyar with the promise to return the same within one year. However, respondent / accused subsequently on 06.12.2021 issued a cheque dated 28.02.2022, however, which on presentation in Bank was dishonored. Hence, a case was registered against the respondent/accused.

**3.** After investigation of the case, the Investigating Officer submitted final report suggesting the case to be cancelled under 'C' class; however, learned trial Court did not agree with his report and

took cognizance of the offence. After framing of charge, prosecution examined complainant Imdad Ali, PWs Ghazi Khan Parhiyar and ASI Syed Shafi Muhammad Shah, who produced numerous documents and after closure of prosecution evidence side. Statement of accused was recorded in terms of section 342 Cr.P.C, in which he claimed his innocence. However, neither he examined himself on oath nor led defence witnesses.

**4.** The learned trial Court after hearing the Counsel for the parties and evaluation of the evidence acquitted the respondent/accused vide impugned judgment, which has been assailed before this court by the appellant/complainant by preferring the instant criminal acquittal appeal.

**5.** Learned counsel for the appellant/complainant submits that the impugned judgment is result of misreading and non-reading of evidence adduced at the trial and the trial court has erred both on law and facts; that the prosecution witnesses have established the case against the respondent/accused. He further submits that the evidence of complainant and P.Ws was not shattered and they have fully supported the case of prosecution; that there are no material contradictions in between testimony of prosecution witnesses and the respondents/accused have been specifically been booked with the commission of crime as the basis of registration of instant case is an instrument i.e. dishonored cheque, which is matter of record. He further submits that for constitution of offence dishonor cheque is sufficient to substantiate the version of complainant. He lastly submits that the acquittal of the respondents/accused by way of impugned judgment requires interference by this Court and the same may be set aside.

**6.** Heard learned counsel for appellant / complainant and perused the material made available on the record.

**7.** From the perusal of impugned judgment, it reflects that the trial Court has discussed each and every piece of evidence by giving cogent reasons and has acquitted the respondent / accused. It further reflects that during evidence complainant stated that he has given an amount of Rs.1,700,000/- as loan to the respondent / accused and for repayment of loan, he issued a cheque but when he demanded his amount, the respondent / accused said him that he

has invested the amount in business and also requested for further amount for investment and on his request, complainant also given further amount to the respondent / accused for business and two more cheques were also issued to the complainant. Complainant in his evidence has also admitted that he and respondent / accused took 64 acres land at Tando Allahyar on lease on 20.07.2020. He also admitted that prior to dishonor of the cheques, respondent / accused filed a civil suit for cancellation of cheques against him, which is pending before learned Senior Civil Judge-II, Kotri. So far the agreement of rendition of accounts is concerned, which does not carry any weight in presence of admission of the complainant himself to have obtained land on lease together with the respondent/accused. Such admission negates the version of complainant as to giving amount as loan to the respondent / accused but suggests that it has been given for business purpose which too appears to be joint business if this version of complainant for obtaining land on lease is kept in juxtaposition to the version as claimed in his FIR then the narration in FIR has no substance and the same cannot be considered to connect the respondent. The infirmities as observed by the trial Court have been suitably highlighted in its judgment. The observations of the trial Court on very material points seems to be proper and it has properly commented on the required aspects of the case. In these circumstances, the learned trial Court has rightly concluded that the complainant could not establish the case against the respondent / accused.

**8.** It is pertinent to mention here that when learned counsel for appellant was called upon to show the misreading or non reading of evidence or other infirmity afflicting the impugned judgment, particularly the points noted by the learned trial Court in the impugned judgment, he was found lacking and could not point out any such error or omission. It is well settled principle of law that after earning the acquittal from the trial Court, double presumption of innocence is acquired by an accused. The Court sitting in appeal against acquittal always remain slow in reversing the judgment of acquittal, unless it is found to be arbitrary, fanciful and capricious on the face of it or is the result of bare misreading or non-reading of any material evidence. In the case of *Muhammad Mansha Kousar v.*

*Muhammad Asghar and others (2003 SCMR 477)* the Honourable apex Court observed as under:-

*“That the law relating to reappraisal of evidence in appeals against acquittal is stringent in that the presumption of innocence is doubled and multiplied after a finding of not guilty recorded by a competent court of law. Such findings cannot be reversed, upset and disturbed except when the judgment is found to be perverse, shocking, alarming, artificial and suffering from error of jurisdiction or misreading, non reading of evidence... Law requires that a judgment of acquittal shall not be disturbed even though second opinion may be reasonably possible”.*

Similar view was reiterated by the Honourable apex Court in the case of *Muhammad Tasaweer v. Zulkarnain and 2 others (PLD 2009 SC 53)*, in the following words:-

*“Needless to emphasize that when an accused person is acquitted from the charge by a Court of competent jurisdiction then, double presumption of innocence is attached to its order, with which the superior courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record.”*

**9.** For the foregoing reasons and keeping in view the dictum laid down in the cases (*supra*), I do not see any weight in the arguments advanced by learned counsel for the appellant / complainant and do not find any illegality in the impugned judgment of acquittal; as such the acquittal appeal is hereby **dismissed** in *limini* along with listed applications.

JUDGE