

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Acquittal Appeal No.174 of 2022

Appellant: Hakim Ali through Mr. Zulfiqar Ali Qureshi,
advocate

The State: Mr. Khadim Hussain Khuharo, Additional
Prosecutor General for the State

Respondent: Mst. Sakina Bibi present in person

Date of hearing: 11.10.2023

Date of judgment: 11.10.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The facts in brief necessary for disposal of the instant Criminal Acquittal Appeal are that the private respondent alleging maltreatment etc. against the appellant, who happened to be his ex-husband lodged FIR Crime No.58/2020 u/s. 354/337A(i)/504-34 PPC with PS City Court, same on investigating was recommended by police to be cancelled under `B` Class and was cancelled accordingly by learned XIIth-Judicial Magistrate Karachi, South, vide order dated 30.07.2020 with direction to SHO PS City Court to initiate proceedings u/s. 182 Cr.PC against the complainant, which ought to have been under PPC. On the basis of such direction, SHO PS City filed direct complaint before learned XIIth-Judicial Magistrate Karachi, South, for prosecution of the private respondent u/s. 182 PPC. It was transferred to file of learned Vth-Judicial Magistrate Karachi, South, who on conclusion of trial, recorded acquittal of the private respondent vide judgment dated 9.02.2022 which is impugned by the appellant being aggrieved person before this Court by preferring the instant Criminal Acquittal Appeal.

2. It is contended by learned counsel for the appellant that learned trial Magistrate has recorded acquittal of the private respondent on the basis of improper assessment of the evidence; therefore, her acquittal is to be examined by this court.

3. Learned Addl. PG for the State and the private respondent in person by supporting the impugned judgment have sought for dismissal of the instant CrI. Acquittal Appeal by contending that the appellant is intending to satisfy his grudge with the private respondent being his ex-wife.

4. Heard arguments and perused the record.

5. It is settled by now that before initiating proceedings u/s. 182 PPC notice is to be issued against the proposed accused calling upon him/her to explain his/her position. There is nothing in order dated 30.07.2020 passed by learned XIIth-Judicial Magistrate Karachi, South, which may suggest that such notice was actually ordered to be issued against the private respondent to explain her position. When confronted with such omission, learned counsel for the appellant produced photo-stat copy of a notice, which is said to have been issued against the private respondent prior to initiating proceeding u/s. 182 PPC against her. Perusal whereof reveals that it has been issued against the private respondent on 27.7.2020, it was at-least three days before the passing of order dated 30.07.2020 by learned XIIth-Judicial Magistrate Karachi, South. How it happened? No explanation to it is offered which prima facie suggest some foul play. Even otherwise, there is nothing on record which may suggest that such notice was actually served upon the private respondent. The proceedings u/s. 182 PPC against the private respondent as said above were initiated on filing of a direct complaint by SHO PS City. Sub-section (2) to Section 417

requires that, if an order of acquittal is passed on a complainant then it could be impugned by an aggrieved person with grant of special leave to appeal. No special leave to appeal is sought for by the appellant prior to filing of the instant Acquittal Appeal before this Court; such omission on his part has made the instant Criminal Acquittal Appeal before this Court to be incompetent.

6. Nothing has been noticed which may suggest that the acquittal of the private respondent has been recorded by learned trial Magistrate in arbitrary or cursory manner which may justify this Court to make interference with it.

7. In case of *State and others vs. Abdul Khaliq and others* (PLD 2011 SC-554), it has been held by the 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”.

8. In view of the facts and reasons discussed above, the instant Criminal Acquittal Appeal fails and it is dismissed accordingly.

JUDGE